

*United States Court of Appeals
for the Second Circuit*



APPENDIX

B
PLG

75-4020

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

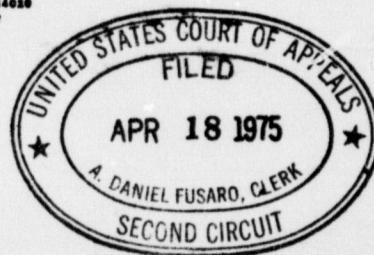
DUNKIRK MOTOR INN, INC., d/b/a HOLIDAY INN
OF DUNKIRK-FREDONIA, RESPONDENT.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
*Deputy Associate General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.*

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
BATAVIA, N. Y. 14020
716-549-0457



PAGINATION AS IN ORIGINAL COPY

INDEX.

	Page
Chronological List of Relevant Docket Entries—Case	
No. 3-CA-5747	1
Decision and Order—Case No. 3-CA-5747	3
Ruling on the Motion for Summary Judgment	4
Findings of Fact	8
I. The Business of the Respondent	8
II. The Labor Organization Involved	8
III. The Unfair Labor Practices	8
A. The Representation Proceeding	8
1. The unit	8
2. The certification	9
B. The Request to Bargain and Respondent's Refusal	9
IV. The Effect of the Unfair Labor Practices Upon Commerce	10
V. The Remedy	10
Conclusions of Law	11
Order	12
Appendix—Notice to Employees, Posted by Order of the National Labor Relations Board, an Agency of the United States Government	15
Motion to Transfer Proceeding to Board, to Strike Respondent's Answer in Part, to Strike Alleged Affirmative Defenses, and for Summary Judgment—	
Case No. 3-CA-5747	29
Case Exhibits	33
Order Transferring Proceeding to the Board and Notice to Show Cause—Case 3-CA-5747	37

II.

	Page
Excerpts of Stenographic Testimony at Hearing, September 19, 1973—Case No. 3-RC-5678	78
Excerpts from Stenographic Transcript of Testimony at Hearing, September 20, 1973—Case No. 3-RC-5678	202
Excerpts from Stenographic Transcript of Testimony at Hearing, October 10, 1973—Case No. 3-RC-5678 ..	303

TESTIMONY.

Witnesses for Employer:

King, Ken	
Direct Examination	81
Cross Examination	103, 141
Ré-direct Examination	149
Re-cross Examination	157
Fitzpatrick, Leola	
Direct Examination	166
Cross Examination	182, 196
Hancock, Ruth Alice	
Direct Examination	202
Cross Examination	222, 245
Ré-direct Examination	246
Re-cross Examination	254, 256
Degleris, Anthony	
Direct Examination	258
King, Dean	
Direct Examination	365
Cross Examination	367

Witnesses for Petitioner:

Perisi, Ann	
Direct Examination	260
Cross Examination	265

III.

	Page
Perisi, Ann	
Re-direct Examination	267
Re-cross Examination	267
Rose, Patricia	
Direct Examination	268
Cross Examination	274
Rose, Susanne	
Direct Examination	276
Cross Examination	283, 289
Szocki, Jessie	
Direct Examination	289
Cross Examination	291
Strobel, Mary	
Direct Examination	294
Lineman, Joyce	
Direct Examination	297
Cross Examination	300
Re-direct Examination	303
Nichols, Sandra Ann	
Direct Examination	305
Cross Examination	316, 322
Re-direct Examination	327, 340
Re-cross Examination	339
Zielinski, Dorothy	
Direct Examination	342
Cross Examination	352, 354
Re-direct Examination	356, 364
Re-cross Examination	362

IV.
EXHIBITS.

	Page
Case No. 3-CA-5747	
Exhibit 2a—Charge Against Employer. Printed at ...	19
Exhibit 2c—Complaint and Notice of Hearing. Printed at	20
Exhibit 2e—Answer. Printed at	25
Case No. 3-RC-5678	
Exhibit 1—Letter, dated July 1, 1974, from John B. Drenning, to Mr. George Fromm, Vice President, Amalgamated Meat Cutters and Food Store Employees Union, Local No. 34, AFL-CIO. Printed at	17
Exhibit 4a—Tally of Ballots. Printed at	39
Exhibit 4c—Letter, dated May 18, 1973, from Moot, Sprague, Marcy, Landy, Fernbach & Smythe, by John B. Drenning, to Regional Director, National Labor Relations Board. Printed at	46
Exhibit 4d—Report on Challenges and Objections. Printed at	48
Exhibit 4g—Decision and Order Directing Hearing. Printed at	57
Exhibit 4n—Report and Recommendation on Challenged Ballots. Printed at	61
Exhibit 4r—Supplemental Decision and Certification of Representative. Printed at	69

Chronological List of Relevant Docket Entries.

In the Matter of:

**DUNKIRK MOTOR INN, INC., d/b/a
HOLIDAY INN OF
DUNKIRK-FREDONIA.**

Case No.: 3-CA-5747.

- 3.13.74 Petition filed.**
- 3.30.73 Stipulation for Certification Upon Consent Election, approved.**
- 5.11.73 Notice of Election.**
- 5.11.73 Tally of Ballots.**
- 5.11.73 Certification on Conduct of Election, dated.**
- 5.18.73 Respondent's Objection to Election, dated.**
- 5.18.73 Respondent's Second Objection to Election, dated.**
- 6. 8.73 Report on Challenges and Objection, dated.**
- 6.18.73 Respondent's Exceptions to Report on Challenges and Objections, received.**
- 8.22.73 Decision and Order Directing Hearing, dated.**
- 8.29.73 Notice of Hearing on Challenges, dated.**
- 9.19.73 Hearing opened.**
- 9.21.73 Hearing Officer's Order Resuming Hearing, dated.**
- 10.10.73 Hearing closed.**

*Chronological List of Relevant Docket
Entries—Case 3-CA-5747.*

10.24.73 Respondent's Motion to Correct Transcript, dated.

10.25.73 Hearing Officer's Report and Recommendation on Challenged Ballots, dated.

11.16.73 Respondent's Exceptions to Hearing Officer's Report and Recommendation on Challenged Ballots, received.

12.11.73 Board's Order Granting Motion, dated.

6.12.74 Supplemental Decision and Certification of Representative, dated.

7.12.74 Charge filed.

7.25.74 Regional Director's Complaint and Notice of Hearing, dated.

8. 5.74 Respondent's Answer, dated.

8. 8.74 Regional Director's Order Postponing Hearing Indefinitely, dated.

8.16.74 General Counsel's Motion to Transfer Proceeding to Board, to Strike Respondent's Answer in Part, to Strike alleged affirmative defenses, and for Summary Judgment (with attachments), dated.

8.28.74 Board's Order Transferring Proceeding to the Board and Notice to Show Cause, dated.

9. 6.74 Charging Party's Motion to Transfer Proceeding to Board, to Strike Respondent's answer in part, to Strike alleged affirmative defense, and for Summary Judgment, dated.

Decision and Order—Case No. 3-CA-5747.

9. 9.74 Respondent's Response to Notice to Show Cause, dated.

11.22.74 Board's Decision and Order, dated.

Decision and Order.

Case 3—CA—5747.

Upon a charge filed on July 12, 1974, by Amalgamated Meatcutters and Butcher Workers of North America, Local 34, AFL-CIO, herein called the Union, and duly served on Dunkirk Motor Inn, Inc., d/b/a Holiday Inn of Dunkirk-Fredonia, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 3, issued a complaint on July 25, 1974, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on June 12, 1974, following a Board election in Case 3—RC—5678, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that,

¹ Official notice is taken of the record in the representation proceeding, Case 3—RC—5678, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1957); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

Decision and Order—Case No. 3-CA-5747.

commencing on or about July 1, 1974, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, and to furnish information necessary and relevant for intelligent collective bargaining, although the Union has requested, and is requesting, it to do so. On August 5, 1974, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 19, 1974, counsel for the General Counsel filed directly with the Board a motion to transfer proceeding to the Board, to strike Respondent's answer in part, to strike alleged affirmative defenses, and for summary judgment. Thereafter, the Charging Party joined in this motion of counsel for the General Counsel. Subsequently, on August 28, 1974, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**RULING ON THE MOTION FOR
SUMMARY JUDGMENT**

In its answer to the complaint and response to the Notice To Show Cause, the Respondent, in effect, attacks the validity of the Union's majority status and certification because the

Decision and Order—Case No. 3-CA-5747.

Board improperly found certain voters to be supervisors and therefore ineligible to vote and because the Board failed to set aside the election on the Respondent's Objection 1, alleging the Union's offer to waive initiation fees.

Our review of the record herein, including that in Case 3—RC—5678, reveals that, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on May 11, 1973, among the employees in the stipulated bargaining unit. The tally of ballots showed that, of the approximately 67 eligible voters, 20 voted for, and 18 against, the Union, with 5 challenged ballots.² Respondent filed two timely objections to conduct affecting the results of the election, alleging, in substance, (1) that the Union's offer to waive initiation fees, if it won the election, and (2) that its threats of reprisal for failing to vote for it both constituted coercive conduct which interfered with the election. After an investigation, the Acting Regional Director issued, on June 8, 1973, a report on challenges and objections in which he recommended that the challenges be sustained, the objections overruled, and the Union certified as the bargaining representative of the unit employees.

The Respondent thereafter filed timely exceptions to the Acting Regional Director's findings (1) that Nichols, Straight, and Hancock were supervisors and therefore ineligible to vote, and (2) that there was no merit in Objection 1 which alleged that the Union's offer to waive initiation fees coercively interfered with the election. On August 22, 1973, the Board, after considering the Acting Regional Director's report and exceptions thereto, issued an unpublished Decision and Order Directing Hearing in which it adopted the

² John Addabbo, Fleury Richmond, Sandra Ann Nichols, John Leslie Straight, and Ruth Alice Hancock.

Decision and Order—Case No. 3-CA-5747.

recommendations as to the objections and as to two of the challenges and in which it directed a hearing on the three challenged ballots on Nichols, Straight, and Hancock.

On October 25, 1973, after a hearing in which the Respondent and Union participated, the Hearing Officer issued a report in which he found that Straight was an employee and Nichols and Hancock were supervisors. Accordingly, he recommended that the challenge to Straight's ballot be overruled, the challenges to the ballots of Nichols and Hancock be sustained, a revised tally be issued, and the Union certified. The Respondent filed exceptions to the report with a supporting brief in which it reasserted its Objection 1 and also argued that Nichols and Hancock were employees rather than supervisors.

After considering the Hearing Officer's report, the exceptions, the briefs, and the entire record, the Board panel (Chairman Miller concurring the dissenting in part) issued a Supplemental Decision and Certification of Representative (211 NLRB No. 56 (1974) in which it adopted, with minor modifications, the Hearing Officer's findings and recommendations sustaining the challenges to the ballots of Nichols and Hancock on the ground that they were supervisors (Chairman Miller dissenting as to Hancock) and affirming the propriety of the Acting Regional Director's finding that the offer to waive initiation fees, alleged in Objection 1, did not fall within the proscription of the Supreme Court's decision in *N.L.R.B. v. Savair Manufacturing Co.*, 414 U.S. 270 (1973), and therefore did not interfere with the election. Accordingly, the Board certified the Union.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section

Decision and Order—Case No. 3-CA-5747.

8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.⁴ We shall, accordingly, grant the Motion for Summary Judgment.⁵

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

⁴ In view of the Respondent's failure to file an answer to the allegations of the complaint concerning the filing and service of the instant charge and concerning the Union's status as a labor organization within the meaning of Sec. 2(5) of the Act, these allegations are deemed to be admitted to be true and are so found. (Sec. 102.20 of the Board's Rules and Regulations). The Respondent also demanded strict proof (1) as to the Union's certification and representative status; and (2) as to the necessity and relevancy of the information requested by the Union. As to (1), this has been established in the underlying representation case and may not be relitigated; as to (2), we agree with the counsel for the General Counsel's assertion that the information is presumptively necessary and relevant to intelligent bargaining, especially since the Respondent's letter of July 1, 1974, questioned only the validity of the Union's certification and not the necessity and relevancy of the requested information.

⁵ In view of our determination herein, we deem it unnecessary to rule on the General Counsel's motion to strike part of the Respondent's answer.

Decision and Order—Case No. 3-CA-5747.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a New York corporation, maintains its principal office and place of business on Route 60, Dunkirk, New York, where it is engaged in the business of operating a motel and restaurant.

During the past year, the Respondent had gross revenues in excess of \$500,000 and purchased, transferred, and delivered to its Dunkirk motel and restaurant foods, supplies, and materials valued in excess of \$50,000 of which in excess of \$50,000 were transported to said motel and restaurant directly from the States other than the State of New York.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

Decision and Order—Case No. 3-CA-5747.

All waitresses, kitchen help, desk clerks, housemaids, busboys, cooks, dishwashers, maintenance, and bartenders, including regular part-time employees and other housekeeping personnel; excluding all office clerical employees, secretaries, sales personnel, professional employees, guards, and all other employees and supervisors as defined in the Act.

2. The certification

On May 11, 1973, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 3, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on July 12, 1974, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about June 17, 1974, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit and to furnish information necessary and relevant to intelligent collective bargaining, regarding the employees in the bargaining unit, their addresses, starting dates, rates of pay, and classifications; names and addresses of employees in the bargaining unit on layoff, sick leave, or other leave; a copy of any health and welfare, pension, savings, and/or disability plans the Respondent has; and a

Decision and Order—Case No. 3-CA-5747.

copy of Respondent's rules or practices in effect. Commencing on or about July 1, 1974, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since July 1, 1974, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

Decision and Order—Case No. 3-CA-5747.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Dunkirk Motor Inn, Inc., d/b/a Holiday Inn of Dunkirk-Fredonia, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All waitresses, kitchen help, desk clerks, housemaids, busboys, cooks, dishwashers, maintenance, and bartenders, including regular part-time employees and other housekeeping personnel; excluding all office clerical employees, secretaries, sales personnel, professional employees, guards, and all other employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Decision and Order—Case No. 3-CA-5747.

4. Since June 12, 1974, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 17, 1974, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, and to furnish the necessary and relevant information requested, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Dunkirk Motor Inn, Inc., d/b/a Holiday Inn of Dunkirk-Fredonia, Dunkirk, New York, its officers, agents, successors, and assigns, shall:

Decision and Order—Case No. 3-CA-5747.

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All waitresses, kitchen help, desk clerks, housemaids, busboys, cooks, dishwashers, maintenance, and bartenders, including regular part-time employees and other housekeeping personnel; excluding all office clerical employees, secretaries, sales personnel, professional employees, guards, and all other employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement and provide the necessary and relevant information regarding employees in the bargaining unit, their addresses, starting dates, rates of pay, and classification; names and addresses of employees in the bargaining unit on lay off, sick leave, or other leave; a copy of any health and welfare, pension, savings, and/or disability plan it has; and a copy of its rules or practices in effect.

Decision and Order—Case No. 3-CA-5747.

(b) Post at its motel and restaurant in Dunkirk, New York, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Respondent's representative, shall be posed by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. Nov. 22, 1974.

JOHN H. FANNING, *Member*,
JOHN A. PENELLO, *Member*,
National Labor Relations Board.

—
CHAIRMAN MILLER, dissenting:

In the Board's Supplemental Decision and Certification of Representative in Case 3—RC—5678, I dissented from my colleagues' finding that Hancock was a statutory supervisor because I could find nothing in the record which could sup-

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Appendix Attached to Decision and Order.

port that finding. Accordingly, in my view, the election results were still in doubt and the Union's certification was therefore being prematurely issued. In these circumstances, I would not find that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union or to furnish it information and, accordingly, I would deny the Motion for Summary Judgment.

Dated, Washington, D.C. Nov. 22, 1974.

EDWARD B. MILLER, *Chairman,*
National Labor Relations Board.

APPENDIX.**NOTICE TO EMPLOYEES**

**POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT**

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the

Appendix Attached to Decision and Order.

bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All waitresses, kitchen help, desk clerks, housemaids, busboys, cooks, dishwashers, maintenance, and bartenders, including regular part-time employees and other housekeeping personnel; excluding all office clerical employees, secretaries, sales personnel, professional employees, guards, and all other employees and supervisors as defined in the Act.

WE WILL provide the Union with necessary and relevant information regarding employees in the bargaining unit, their addresses, starting dates, rates of pay, and classifications; names and addresses of employees in the bargaining unit on layoff, sick leave, or other leave; a copy of any health and welfare, pension, savings, and/or disability plans we have; and a copy of our rules and practices in effect.

DUNKIRK MOTOR INN, INC.,
d/b/a HOLIDAY INN OF
DUNKIRK-FREDONIA.
(Employer)

Dated By
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Exhibit 1—Case No. 3-RC-5678.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 9th Floor, Federal Building, 111 West Huron Street, Buffalo, New York 14202, Telephone 716-842-3100.

Exhibit 1.

Case No. 3-RC-5678

**MOOT, SPRAGUE, MARCY, LANDY
FERNBACH & SMYTHE
Attorneys at Law**

**2300 Erie County Savings Bank Bldg.
Two Main Place
Buffalo, New York 14202
716-842-6000**

July 1, 1974

**CERTIFIED MAIL
RETURN RECEIPT
REQUESTED**

**Mr. George Fromm, Vice President
Amalgamated Meat Cutters and Food
Store Employees Union
Local No. 34, AFL-CIO
770 Maryvale Drive
Buffalo, New York 14225**

**Re: *Dunkirk Motor Inn, Inc.*
d/b/a Holiday Inn of
*Dunkirk-Fredonia***

Dear Mr. Fromm:

Your letter of June 17, 1974 addressed to Mr. Barnet of the Dunkirk, New York Holiday Inn has been turned over to this office for response.

Exhibit 1—Case No. 3-RC-5678.

In behalf of the captioned Employer, we must respectfully decline the demands made in your letter and inform you that the Employer declines to meet with you at this time, on the ground that the Certification of the National Labor Relations Board, in its Decision of June 12, 1974, is incorrect and has been issued prematurely.

Very truly yours,

JOHN B. DRENNING,
John B. Drenning.

JBD/pc
xc Mr. Anthony S. Degleris

Exhibit 2(a)—Case No. 3-CA-5747.

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD	
CHARGE AGAINST EMPLOYER	
INSTRUCTIONS: File an original and 6 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	
DO NOT WRITE IN THIS SPACE	
Case No. 3-CA-5747 Date Filed 7-12-74	
1. EMPLOYER AGAINST WHOM CHARGE IS DIRECTED	
a. Name of Employer DUNKIRK MOTOR INN., INC. b. Number of Workers Employed 48 Approximately c. Address of Established Street and number, city, State, and ZIP code Box 60, Dunkirk, New York d. Employer Representative to Customer ----- c. Phone No. ----- e. Type of Establishment (Business, office, warehouse, etc.) ----- f. Identify Principal Product or Service Motel and Food Services Hotel and Restaurant	
g. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.	
h. Basis of the Charge (Be specific as to facts, names, addresses, places involved, dates, places, etc.)	
<p>Upon information and belief, on or about June 17, 1974, and at all times thereafter, the Employer, by its officers, agents and representatives, has declined and refused to bargain collectively with Amalgamated Meat Cutters and Butcher Workmen of North America, Local 34, the certified collective bargaining agent for an appropriate unit of employees at its motel and restaurant located at Dunkirk, New York.</p>	
<p>By the above and others now, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.</p>	
i. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)	
Amalgamated Meat Cutters and Butcher Workmen of North America, Local 34	
j. Address (Street and number, city, State, and ZIP code) 770 Mayvale Drive, Buffalo, New York 14225 k. Telephone No. 716-633-9344	
l. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Which May Be Asked to Represent Charge as Filed by a Labor Organization	
Amalgamated Meat Cutters and Butcher Workmen of North America	
m. DECLARATION	
<p>I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.</p> <p>By <u>Richard T. Bryant</u> Attorney (Signature of representative or person filing charge) 716-856-2400 July 11, 1974 One Niagara Square, Buffalo, N.Y. 14202 Telephone number 10000</p>	
WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND OR REMOVED FROM SERVICE, TITLE 18, SECTION 1000	

Exhibit 2c.

Case No. 3-CA-5747

COMPLAINT AND NOTICE OF HEARING

It having been charged by Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, herein called the Union, that Dunkirk Motor Inn, Inc., d/b/a Holiday Inn of Dunkirk-Fredonia, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Third Region, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

I

The charge herein was filed by the Union on July 12, 1974, and served by registered mail on Respondent on or about July 12, 1974.

II

(a) Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Respondent has maintained its principal office and place of business on Route 60, in the City of Dunkirk, and State of New York, herein called the Dunkirk motel and Restaurant, and is, and has been at all times material herein, continuously engaged at said location in the business of operating a motel and restaurant. The

Exhibit 2c—Case No. 3-CA-5747.

Respondent's Dunkirk motel and restaurant are the only facilities involved in this proceeding.

(c) During the past year, Respondent had gross revenues in excess of \$500,000, and in the course and conduct of its business operations, purchased, transferred, and delivered to its Dunkirk motel and restaurant, goods, supplies and materials, valued in excess of \$50,000, in which goods, supplies and materials, valued in excess of \$50,000, were transported to said motel and restaurant directly from States of the United States other than the State of New York.

III

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

IV

The Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

V

At all times material herein, the following-named person occupied the position set opposite his name, and has been and is now an agent of the Respondent acting on its behalf, and/or is a supervisor within the meaning of Sections 2(13) and 2(11) of the Act:

Michael Barnett—Innkeeper

VI

(a) On June 12, 1974, the Board (in Case No. 3-RC-5678, reported at 211 NLRB No. 56), issued a Supplemental Decision and Certification of Representative, following the

Exhibit 2c—Case No. 3-CA-5747.

holding of an election by secret ballot and certain other proceedings under the Act and the Board's Rules and Regulations, wherein the Union was certified as the exclusive representative for purposes of collective bargaining of Respondent's employees in the following described unit.

All waitresses, kitchen help, desk clerks, housemaids, busboys, cooks, dishwashers, maintenance, and bartenders including regular part-time employees and other housekeeping personnel; excluding all office clerical employees, secretaries, sales personnel, professional employees, guards, all other employees and supervisors as defined in the Act.

(b) The Union is now, and at all times since June 12, 1974, has been the exclusive representative for collective bargaining purposes of all the employees in the unit described in subparagraph VI(a) above, within the meaning of Section 9(a) of the Act, and said unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

VII

(a) Commencing on or about June 17, 1974, (by letter addressed to Michael Barnett), and continuing to date, the Union has requested Respondent to bargain collectively with respect to wages, hours and other terms and conditions of employment of the employees in the unit described above in paragraph VI(a).

(b) On or about June 17, 1974, the Union (by letter described above), requested Respondent to furnish it with certain information, to wit: a list of employees in the bargaining unit, their addresses, starting dates, rates of pay and classification, names and addresses of employees in the bargaining unit on layoff, sick leave, or other leaves; a copy

Exhibit 2c—Case No. 3-CA-5747.

of any health and welfare, pension, savings and/or disability plans Respondent has; and a copy of Respondent's rules or practices in effect.

(c) The information requested by the Union, as described in its letter of June 17, 1974, was, and is, necessary and relevant for intelligent collective bargaining.

VIII

Commencing on or about July 1, 1974, and continuing to date, Respondent has failed and refused, and continues to fail and refuse to bargain collectively in good faith with the Union by the following acts and conduct:

Respondent, by letter dated July 1, 1974, addressed to the Union, declined to furnish the Union the information requested in its letter of June 17, 1974, and declined to meet, recognize or bargain with the Union on the ground that the Board's Certification of June 12, 1974, was incorrect and issued prematurely.

IX

By the acts described above in paragraph VIII, Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

X

By the acts described above in paragraph VIII, under the circumstances set forth above in paragraphs VI and VII, Respondent has failed and refused, and is failing and refusing to bargain collectively in good faith with the certified

Exhibit 2c—Case No. 3-CA-5747.

representative of its employees, and has thereby engaged in, and is thereby engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

XI

The acts of Respondent described in paragraph VIII, under the circumstances set forth in paragraphs VI, and VII, above, occurring in connection with the operations of Respondent, described in paragraphs II, and III, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XII

The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 5th day of September, 1974, and consecutive days thereafter until concluded, at 10:00 a.m., Eastern Daylight Saving Time, at the Hearing Room, National Labor Relations Board, Federal Building, Ninth Floor, 111 West Huron Street, Buffalo, New York 14202, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board In Unfair Labor Practice Proceedings, is attached.

Exhibit 2e—Case No. 3-CA-5747.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

DATED at Buffalo, New York, this 25th day of July, 1974.

THOMAS W. SEEGER,
Thomas W. Seeler,
Regional Director,
National Labor Relations Board,
Third Region,
Federal Building—Ninth Floor,
111 West Huron Street,
Buffalo, New York 14202.

Exhibit 2e.

Case No. 3-CA-5747.

ANSWER

Comes DUNKIRK MOTOR INN, INC., D/B/A HOLIDAY INN OF DUNKIRK-FREDONIA, by and through its attorneys, MOOT, SPRAGUE, MARCY, LANDY, FERNBACH & SMYTHE, and for an answer to the complaint heretofore filed in this cause, says:

Exhibit 2e—Case No. 3-CA-5747.

1.

Paragraph I of the complaint, relating solely to the filing and service of the charge herein, Respondent makes no answer thereto.

2.

Respondent admits the allegations of paragraph II of the complaint.

3.

Respondent admits the allegations of paragraph III of the complaint.

4.

Paragraph IV of the complaint, relating solely to the Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, Respondent makes no answer thereto.

5.

With reference to paragraph V of the complaint, Respondent admits that since on or about June 1, 1974, Michael Barnett occupied the position of Respondent's Innkeeper, and since that date has been and is now an agent of Respondent acting on its behalf, and/or is a supervisor within the meaning of Sections 2(13) and 2(11) of the Act.

6.

Respondent neither admits nor denies the allegations of paragraph VI of the complaint and demands strict proof thereof.

7.

With reference to paragraph VII of the complaint, Respondent admits that on or about June 17, 1974, by letter ad-

Exhibit 2e—Case No. 3-CA-5747.

dressed to Michael Barnett, the Union requested Respondent to bargain collectively with respect to wages, hours and other terms and conditions of employment of Respondent's employees, and further requested Respondent to furnish it with the information recited in subparagraph (b) of paragraph VII of the complaint, but Respondent neither admits nor denies the other allegations of paragraph VII of the complaint, and, as to those, demands strict proof thereof.

8.

Respondent admits the allegations of paragraph VIII of the complaint.

9.

Respondent denies the allegations of paragraph IX of the complaint.

10.

Respondent denies the allegations of paragraph X of the complaint.

11.

Respondent denies the allegations of paragraph XI of the complaint.

12.

Respondent denies the allegations of paragraph XII of the complaint.

**FURTHER ANSWERING THE COMPLAINT,
RESPONDENT ALLEGES:**

13.

The challenged ballot of John Leslie Straight, found by the Board to have been an employee and therefore eligible to vote

Exhibit 2e—Case No. 3-CA-5747.

in the representation election held herein on May 11, 1973, and the challenged ballots of Ruth Alice Hancock and Sandra Ann Nichols, found by the Board to have been supervisors within the meaning of the Act and therefore ineligible to vote in the representation election, were not opened and counted. Respondent urges that all the aforementioned were employees and were therefore eligible to vote, by reason of which a revised tally of ballots reflecting the final election results should be issued and should be otherwise acted upon by the Board.

14.

As found by the investigation conducted by the Regional Director with reference to Objection No. 1 of the Petitioner's objections to the election held on May 11, 1973, the Union, at a meeting for employees and a direct mailing to employees dated May 8, 1973, offered to waive initiation fees for employees in the bargaining unit for membership in the Union in the event the Union should win the election. Respondent urges that the Board erred in not finding that the reference objection constituted conduct which warranted setting aside the election, the same being coercive in the context of the election of May 11, 1973.

MOOT, SPRAGUE, MARCY,
LANDY, FERNBACH & SMYTHE,
By John B. Drenning,
John B. Drenning,
Attorneys for Respondent
DUNKIRK MOTOR INN, INC.,
D/B/A HOLIDAY INN OF
DUNKIRK-FREDONIA.

Motion to Transfer Proceeding to Board, to Strike Respondent's Answer in Part, to Strike Alleged Affirmative Defenses, and for Summary Judgment—Case No. 3-CA-5747.

I certify that I have this day served a copy of the foregoing answer upon Richard Lipsitz, attorney for AMALGAMATED MEATCUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 34, AFL-CIO, by placing a copy of the same in the United States mail, postage prepaid, addressed to him at 1 Niagara Square, Buffalo, New York 14202.

JOHN B. DRENNING,
John B. Drenning.

Dated: August 5, 1974

Motion to Transfer Proceeding to Board, to Strike Respondent's Answer in Part, to Strike Alleged Affirmative Defenses, and for Summary Judgment.

Case No. 3-CA-5747.

Comes now the General Counsel of the National Labor Relations Board, by and through Francis J. Novak, Jr., Counsel for the General Counsel and pursuant to the provisions of Section 102.24 and 102.50 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended (herein called the Board's Rules and Regulations), and moves the National Labor Relations Board (herein called the Board) for its Order transferring this proceeding to itself, for its Order Striking the Answer of Respondent in Part, for its Order Striking Respondent's Alleged Affirmative Defenses, and for its Order Granting Summary Judgment in favor of the

Motion to Transfer Proceeding to Board, to Strike Respondent's Answer in Part, to Strike Alleged Affirmative Defenses, and for Summary Judgment—Case No. 3-CA-5747.

General Counsel on the Complaint (marked Exhibit 2c) previously issued in this case.

The General Counsel moves the Board for an Order striking in their entirety paragraphs 1, 4, 6 and for an Order striking in part paragraph 7 of Respondent's Answer (marked Exhibit 2e).

Paragraphs 1 and 4 of Respondent's Answer do not specifically admit, deny, or explain each of the facts alleged in paragraphs 1 and 4 of the Complaint. Therefore, pursuant to the provisions of Section 102.20 of the Board's Rules and Regulations said allegations should be deemed to be admitted to be true.

Paragraph 6 and the affirmative defenses set forth in paragraphs 13 and 14 of Respondent's Answer are an attempt to raise in this proceeding issues litigated at length in the underlying representation case, resolved adversely to Respondent by the Board in its Supplemental Decision and Certification of Representative after a hearing (marked Exhibit 4r).

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding. *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Board's Rules and Regulations, Sections 102.67(f) and 102.69(c).

Respondent in paragraph 7 of its Answer admits the allegations contained in paragraph 7(a) and 7(b) of the Complaint but would neither admit nor deny the allegations of

Motion to Transfer Proceeding to Board, to Strike Respondent's Answer in Part, to Strike Alleged Affirmative Defenses, and for Summary Judgment—Case No. 3-CA-5747.

paragraph 7(c) of the Complaint demanding strict proof. Since this portion of paragraph 7 of Respondent's Answer does not specifically admit, deny, or explain the facts alleged in paragraph 7(c) of the Complaint, said allegations should be deemed to be admitted to be true pursuant to the provisions of Section 102.20 of the Board's Rules and Regulations.

In the alternative, the information requested by the Union should be considered presumptively necessary and relevant for intelligent collective bargaining since Respondent in its letter dated July 1, 1974, admitted in paragraph 8 of the Answer, did not state that the information requested was unnecessary and irrelevant for intelligent collective bargaining as one of its reasons in declining to furnish the Union the information requested (marked Exhibit 1).

With respect to the Motion for an Order Granting Summary Judgment, Counsel for the General Counsel states that such an order is necessary in order to effectuate the purposes of the Act and to avoid unnecessary costs and delay in that, by its Answer to the Complaint, the Respondent has admitted that it is refusing to bargain with the certified representative of its employees. Counsel for the General Counsel submits that Respondent's objective therein has been, and is, to test the validity of the Board's Certification of Representative in Case No. 3-RC-5678 by means of Board's Decision and Court Review.

The grounds for this Motion are:

1. On July 25, 1974, the Regional Director for the Third Region issued a Complaint and Notice of Hearing in this case, pursuant to the provisions of Section 102.15 of the Board's

Motion to Transfer Proceeding to Board, to Strike Respondent's Answer in Part, to Strike Alleged Affirmative Defenses, and for Summary Judgment—Case No. 3-CA-5747.

Rules and Regulations. A copy thereof was served on the Respondent on the same date.

2. On August 5, 1974, the Respondent filed a timely Answer to said Complaint in which¹ it has admitted all material factual allegations of the Complaint.

3. All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding; therefore, Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

4. Attached hereto, marked as Exhibits 1 through 4r, are the case exhibits and the record supporting General Counsel's motion.

Wherefore, Counsel for the General Counsel moves the Board for its Order transferring this proceeding to itself, striking paragraphs 1, 4, 6, in part 7, 13 and 14 of the Respondent's Answer, and granting summary judgment in favor of the General Counsel on the Complaint previously filed herein, finding that no litigable issue of fact is raised by Respondent's Answer to the Complaint requiring a hearing for the taking of evidence, and a finding that the Respondent has violated the Act as alleged in the Complaint. In addition

¹ The statement assumes an entry of an Order by the Board striking paragraphs 1, 4, 6, in part 7, 13 and 14 of the Respondent's Answer.

*Case Exhibits attached to Motion to Transfer
Proceeding to Board, etc.—Case
No. 3-CA-5747.*

to the standard remedy, Counsel for the General Counsel asks that the Board consider the appropriateness of such other relief as may be warranted under the circumstances of this case.

Respectfully submitted,

FRANCIS J. NOVAK, JR.,
Counsel for the General Counsel,
National Labor Relations Board,
Third Region,
Federal Building—Ninth Floor,
111 West Huron Street,
Buffalo, New York 14202.

Dated at Buffalo, New York, this
16th day of August, 1974.

FORMAL PAPERS CASE NO. 3-CA-5747

1 Letter from Employer's Attorney dated July 1, 1974

2a Original charge

2b Affidavit of Service of charge

2c Complaint and Notice of Hearing

2d Affidavit of service of Complaint and Notice of Hearing

2e Respondent's Answer to Complaint and Notice of Hearing

2f Order Postponing Hearing Indefinitely

*Case Exhibits attached to Motion to Transfer
Proceeding to Board, etc.—Case
No. 3-CA-5747.*

2g Affidavit of Service of Order Postponing Hearing Indefinitely

FORMAL PAPERS CASE NO. 3-RC-5678

- 3a The Petition**
- 3b Stipulation for Certification Upon Consent Election**
- 4a Tally of Ballots**
- 4b Certification on Conduct of Election**
- 4c Employer's Objection to Election or to conduct thereof**
- 4d Report on Challenges and Objections**
- 4e Affidavit of service of Report on Challenges and Objections**
- 4f Employer's Exceptions to Report on Challenges and Objections**
- 4g Decision and Order Directing Hearing**
- 4h Notice of Hearing on Challenges**
- 4i Affidavit of Service of Notice of Hearing on Challenges**
- 4j Order Resuming Hearing**
- 4k Affidavit of service of Order Resuming Hearing**
- 4l Employer's Motion to Correct Transcript**
- 4m Order Granting Motion**
- 4n Report and Recommendation on Challenged Ballots**
- 4o Affidavit of service of Report and Recommendation on Challenged Ballots**

*Case Exhibits attached to Motion to Transfer
Proceeding to Board, etc.—Case
No. 3-CA-5747.*

4p Employer's Exceptions of Report and Recommendation on
Challenged Ballots

4q Petitioner's Brief in Opposition to Employer's Exceptions
to Hearing Officer's Report and Recommendation on
Challenged Ballots

4r Supplemental Decision and Certification of Representative

STATEMENT OF SERVICE

Service of copies of the foregoing Motion to Transfer
Proceeding to Board, To Strike Respondent's Answer in Part,
To Strike Alleged Affirmative Defenses, and for Summary
Judgment in Case No. 3-CA-5747, has been made this date by
certified mail on the following parties:

Return Receipt Requested

Certified Mail Nos.

345035 Dunkirk Motor Inn, Inc. d/b/a
 Holiday Inn of Dunkirk-
 Fredonia
 Route 60

 Dunkirk, New York 14048

345036 John B. Drenning, Esq.
 Moot, Sprague, Marcy,
 Landy, Fernbach & Smythe
 2300 Erie County Savings Bank
 Building
 Buffalo, New York 14202

*Case Exhibits attached to Motion to Transfer
Proceeding to Board, etc.—Case
No. 3-RC-5678.*

345037	Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO 770 Maryvale Drive Buffalo, New York 14225
345038	Richard Lipsitz, Esq. One Niagara Square Buffalo, New York 14202

Regular Mail

John C. Truesdale, Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D. C. 20570

DATED at Buffalo, New York this 16th day of August,
1974.

Respectfully submitted,

FRANCIS J. NOVAK, JR.,
Counsel for the General Counsel,
National Labor Relations Board,
Third Region,
Federal Building—Ninth Floor,
111 West Huron Street,
Buffalo, New York 14202.

**Order Transferring Proceeding to the Board and
Notice to Show Cause.**

Case 3-CA-5747

On July 25, 1974, the Regional Director for Region 3 of the National Labor Relations Board issued a Complaint and Notice of Hearing in the above-entitled proceeding, alleging that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended. Subsequently, the Respondent filed an answer, admitting in part and denying in part, the allegations of the complaint, and submitting affirmative defenses.

Thereafter, on August 19, 1974, the General Counsel by counsel filed with the Board in Washington, D. C., a Motion to Transfer Proceeding to Board To Strike Respondent's Answer in Part, To Strike Alleged Affirmative Defenses, and For Summary Judgment, with exhibits attached. The General Counsel submits, in effect that Respondent, in its answer, raises no issue in this proceeding which were or could have been litigated in the prior representation proceeding, Case 3-RC-5678. He, therefore, moves that paragraphs 1, 4, 6, in part 7, 13, and 14 of the Respondent's answer be stricken and summary judgment be granted, finding that no litigable issue of fact is raised by Respondent's answer requiring a hearing for the taking of evidence and finding that the Respondent has violated the Act as alleged in the Complaint.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the above-entitled proceeding be, and it hereby is, transferred to and continued before the Board in Washington, D. C.

*Order Transferring Proceeding to the Board
and Notice to Show Cause—Case
No. 3-CA-5747.*

NOTICE IS HEREBY GIVEN that cause be shown, in writing, filed with the Board in Washington, D. C., on or before September 11, 1974 (with affidavit of service on the parties to this proceeding), why the General Counsel's Motion should not be granted.

Dated, Washington, D. C., August 28, 1974.

By direction of the Board:

GEORGE A. LEET,
Associate Executive Secretary.

Exhibit 4a.

Case No. 3-RC-5678

UNITED STATES OF AMERICA

National Labor Relations Board

DUNKIRK MOTOR INN, INC., d/b/a
HOLIDAY INN OF DUNKIRK-FREDONIA,
Employer,

and

AMALGAMATED MEATCUTTERS AND BUTCHER
WORKMEN OF NORTH AMERICA, LOCAL 34, AFL-
CIO,

Petitioner.

Case No. 3-RC-5678
Date issued May 11, 1973

Type of Election:

(Check one):

Consent Agreement
 Stipulation
 Board Direction
 RD Direction

(If applicable

check either

or both):

8(b) (7)
 Mail Ballot

Exhibit 4a—Case No. 3-RC-5678.

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 67
2. Void ballots 0
3. Votes cast for Petitioner 20
4. Votes cast for
5. Votes cast for
6. Votes cast against participating labor organization(s) 18
7. Valid votes counted (sum of 3, 4, 5, and 6) 38
8. Challenged ballots 5
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 43
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for: Petitioner

For the Regional Director
KATHLEEN MANNING.

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was main-

Exhibit 4a—Case No. 3-RC-5678.

tained, and that the results were as indicated above. We also acknowledge service of this tally.

DUNKIRK MOTOR INN, INC. d/b/a
For HOLIDAY INN OF DUNKIRK-FREDONIA
John B. Drenning
Attorney

AMALGAMATED MEATCUTTERS AND BUTCHER
WORKMEN OF NORTH AMERICA, LOCAL 34,
For AFL-CIO
George Gramm

9. WORDING ON THE BALLOT.—Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom. (*If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect.*)

First.

Amalgamated Meatcutters and Butcher Workmen of
North America, Local 34, AFL-CIO

Second.

Third.

10. PAYROLL PERIOD FOR ELIGIBILITY.—

March 23, 1973

*Exhibit 4a—Case No. 3-RC-5678.***11. DATE, HOURS, AND PLACE OF ELECTION.—**

May 11, 1973, from 7:00 a.m. to 8:00 a.m. and from 2:30 p.m. to 3:30 p.m. in the Dunkirk Room on the Employer's premises.

12. THE APPROPRIATE COLLECTIVE BARGAINING UNIT.—

All waitresses, kitchen help, desk clerks, housemaids, busboys, cooks, dishwashers, maintenance, and bartenders including regular part-time employees; and other housekeeping personnel Excluding all office clerical employees, secretaries, sales personnel, professional employees, guards and supervisors as defined in the Act and all other employees.

GM
JBD

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

DUNKIRK MOTOR INN, INC.

(Employer)

Route 60, Dunkirk, New York

(Address)

By John B. Drenning 3/30/73

Attorney

(Name and Title)

(Date)

Recommended:**Bruce I. Rosenstein 3/30/73**

(Board Agent) (Date)

Date approved Thomas W. Seeler,**THOMAS W. SEELEER, Regional Director****3-30-73****Regional Director,****National Labor Relations Board.****Case No. 3-RC-5678**

*Exhibit 4a—Case No. 3-RC-5678.***AMALGAMATED MEATCUTTERS AND BUTCHER
WORKMEN OF NORTH AMERICA,
LOCAL 34, AFL-CIO**

(Name of Organization)

770 Maryvale Drive, Buffalo, New York 14225

(Address)

By George Fromm 3/30/73

(Name and Title) (Date)

.....
(Name of other Organization).....
(Address)**By**

(Name and Title) (Date)

UNITED STATES OF AMERICA**National Labor Relations Board****Stipulation for Certification Upon Consent Election**

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act, as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby AGREE AS FOLLOWS:

1. **SECRET BALLOT.**—An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in

Exhibit 4a—Case No. 3-RC-5678.

accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board.

2. **ELIGIBLE VOTERS.**—The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls, also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements, but *excluding* any employees who have since quit or been discharged for cause and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than twelve (12) months prior to the date of the election and who have been permanently replaced. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. **NOTICES OF ELECTION.**—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The parties, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

Exhibit 4a—Case No. 3-RC-5678.

4. **OBSERVERS.**—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. **TALLY OF BALLOTS.**—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

6. **POST-ELECTION AND RUN-OFF PROCEDURE.**—All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

7. **RECORD.**—The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

8. **COMMERCE.**—The Employer is engaged in commerce within the meaning of Section 2(6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). (*Insert commerce facts.*) Dunkirk Motor Inn, Inc. is a New York corporation with its principal place of business located at Route 60, Dunkirk, New York, where it is engaged in the operation of a Hotel and Restaurant. During the past twelve months the Employer had gross revenue in excess of \$500,000 and during the same period of time in the course and conduct of its business

Exhibit 4c—Case No. 3-RC-5678.

operations, purchased, transferred and delivered to its Dunkirk facility goods valued in excess of \$50,000 of which goods valued in excess of \$50,000 were transported to the Dunkirk facility from States of the United States other than the State of New York.

Exhibit 4c.**Case No. 3-RC-5678**

May 18, 1973

Regional Director
National Labor Relations Board
Third Region
111 West Huron Street
Buffalo, New York (14202)

Re: Dunkirk Motor Inn, Inc., d/b/a
Holiday Inn of Dunkirk-Fredonia
3-RC-5678

Gentlemen:

In behalf of Dunkirk Motor Inn, Inc., we submit herewith the following objections to conduct which affected the results of the election, together with statements of the reasons therefor, in connection with the election held in the captioned matter on May 11, 1973.

1. By letter dated May 8, 1973, and in speeches and other communications, the Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, through its employees, agents and representatives, offered to waive initiation fees for employees in the bargaining unit for mem-

Exhibit 4c—Case No. 3-RC-5678.

bership in the union in the event the union should win the election, which conduct was coercive in the context of the election.

2. In the weeks preceding the election, the Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, through its employees, agents and representatives, threatened, intimidated and harassed employees in the bargaining unit by telephone calls to the employees and members of their families late at night and in the early hours of the morning, threatening reprisals should the employees fail or neglect to vote for the union in the election, which conduct created an atmosphere of fear of reprisals and was coercive in the context of the election.

By reason of the above conduct and statements, as well as other conduct and statements by union employees, agents and representatives, the Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO has interfered with and impaired the Employees' right to a fair election, thus requiring that the election be set aside.

Very truly yours,

MOOT, SPRAGUE, MARCY, LANDY,

FERNBACH & SMYTHE,

By /s/ John B. Drenning,

John B. Drenning.

Exhibit 4d—Case No. 3-RC-5678.**STATEMENT OF SERVICE**

I certify that I have caused to be served by certified mail, return receipt requested, upon the following named party, a copy of the foregoing objections and statements in support thereof in Case No. 3-RC-5678:

Receipt No. 230105

Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO
770 Maryvale Drive
Buffalo, New York (14225)

/s/ JOHN B. DRENNING,
John B. Drenning,
Moot, Sprague, Marcy, Landy,
Fernbach & Smythe,
Attorneys for Employer.

Dated at Buffalo, New York this 18th day of May, 1973.

Exhibit 4d.

Case No. 3-RC-5678

REPORT ON CHALLENGES AND OBJECTIONS¹

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director on March 30, 1973,² an election by secret ballot was conducted on May 11,

¹ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D. C. Exceptions must be received by the Board in Washington by June 18, 1973.

² All dates referred to hereinafter are in 1973 unless otherwise indicated.

Exhibit 4d—Case No. 3-RC-5678.

among the employees in the following described appropriate collective bargaining unit:

All waitresses, kitchen help, desk clerks, housemaids, busboys, cooks, dishwashers, maintenance, and bartenders including regular part-time employees and other housekeeping personnel, excluding all office clerical employees, secretaries, sales personnel, professional employees, guards and supervisors as defined in the Act and all other employees.

A Tally of Ballots served upon the parties at the conclusion of the election disclosed the following results:

Approximate number of eligible voters	67
Void ballots	0
Votes cast for Petitioner	20
Votes cast against participating labor organization	18
Valid votes counted	38
Challenged ballots	5
Valid votes counted plus challenged ballots	43
Challenges are sufficient in number to affect the results of the election.	

On May 18, the Employer filed timely objections to conduct which affected the results of the election. A copy of the objections is attached hereto as Exhibit 1.

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the Regional Director has caused a full and complete investigation to be made of the challenges, ballots and objections. All evidence adduced during the investigation, including sworn statements of witnesses, documentary evidence submitted by the parties, and the parties statements of position have been fully and carefully considered by the undersigned Acting Regional Director who reports thereon and recommends as follows:

*Exhibit 4d—Case No. 3-RC-5678.***THE CHALLENGES**

The ballots of *John Addabbo, Sandra Ann Nichols, John Leslie Straight and Ruth Alice Hancock* were challenged by the Petitioner's observer on the grounds that they are supervisors within the meaning of the Act. The Employer takes no position regarding Addabbo, the chef, and contends that the others are not supervisory employees, and consequently, are entitled to vote.

The ballot of *Fleury Richmond* was challenged by the Board Agent conducting the election on the grounds that his name was not on the voter eligibility list.

The Petitioner takes the position that Richmond is eligible to vote because he was hired prior to the eligibility date, whereas the Employer contends that Richmond is ineligible to vote because he started work subsequent to the eligibility date.

John Addabbo

The investigation reveals that John Addabbo is employed as chef, and in that position directs the employment of eight employees working in the kitchen. His duties include the control of food and labor costs, the buying of approximately \$8,000 worth of paper goods and food per month and cooking. Although he does not have the authority to hire or fire, he effectively recommends both courses of action to the innkeeper, who has overall responsibility for the inn. Addabbo exercises independent judgment in scheduling the working hours of the kitchen help and assigning overtime. Addabbo is salaried, whereas other kitchen employees are hourly paid. He attends management meetings along with other department heads. No such meetings have taken place since March, however, when the innkeeper, Dean King, became seriously

Exhibit 4d—Case No. 3-RC-5678.

ill and was replaced indefinitely by acting innkeeper James Chieffo.

Based on the foregoing, the undersigned concludes that Addabbo effectively recommends the hiring and firing of employees and exercises independent judgment in the direction of the kitchen work force, and, therefore, is a supervisor within the meaning of the Act. *Yorktowne Hotel*, 126 NLRB 344. Accordingly, it is recommended that the challenge to Addabbo's ballot be sustained.

Sandra Ann Nichols

The investigation reveals that Sandra Ann Nichols is a hostess/cashier. There are three full time and one part-time hostess/cashiers. Nichols works at least 40 hours per week and is paid 60¢ per hour more than waitresses, although, waitresses receive tips. Nichols' duties as a hostess/cashier, in common with other hostess/cashiers, include the greeting of guests, assigning them to tables, giving them menus, taking money at the register, and occasionally pouring water and coffee. She assigns waitresses to their work stations each day as do the other hostess/cashiers during their shift.

Nichols has other responsibilities which only she among the hostess/cashiers, possesses. She interviews applicants for waitress jobs and effectively recommends hiring. In September 1972, the Employer placed an advertisement in the newspaper requesting that applicants for waitress positions see either the innkeeper or Mrs. Nichols. On at least one occasion she effectively recommended the discharge of an employee, and has at times been the person chosen by management to inform employees that they were terminated. Nichols once wrote and posted a notice in her handwriting, which she thinks she signed. The notice informed waitresses and bus boys that if they failed to inform the office of their

Exhibit 4d—Case No. 3-RC-5678.

absence or came in late frequently, they would receive a warning, and that three warnings would result in discharge. Nichols prepares the weekly work schedule for the other hostesses, the waitresses and bus boys, although this schedule is subject to being changed by the innkeeper. The sales representative, who has overall responsibility for parties, and the innkeeper, generally follow Nichols' recommendations regarding which waitresses should be assigned to parties. Nichols cannot grant days off or vacations, but she does forward such requests to the innkeeper.

Because Nichols effectively recommends the hiring and firing of employees and directs the work of the waitresses, the undersigned concludes that she is a supervisor within the meaning of the Act, *Manger Savannah Corp., Inc.*, 126 NLRB 1136, and recommends that the challenge to Nichols' ballot be sustained.

John Leslie Straight

The investigation reveals that John Leslie Straight is the most senior of the four bartenders. They basically have the same duties—the preparation of drinks at the bar and direction of the work of the cocktail waitress. Straight, because of his seniority and experience, receives 25¢ per hour more than the others. Whenever two bartenders are working at the same time—either at a party or on weekend nights during the summer season—the most senior bartender is in charge and directs the work of the others, to the extent that the work is not routine. Consequently, Straight having the most seniority, will be in charge whenever he works with another bartender.

Straight does not have the authority to hire or fire. Apparently only one bartender has been discharged in the year-and-a-half that Straight has worked for the Employer. This was upon the recommendation of all the bartenders. Recently

Exhibit 4d—Case No. 3-RC-5678.

a temporary bartender was needed. The Assistant Manager recommended a person, the innkeeper assented, and Straight called the person and instructed him to come in.

In the past, on two occasions, Straight attended department head meetings, most recently about six months ago. Also, in the past when King was innkeeper, on two occasions Straight was asked by King to write out the work schedules of the bartenders. This generally is unnecessary because the men usually work the same hours each week. Since King's absence, however, circumstances have arisen which have necessitated revising the schedule. This responsibility has fallen on Straight and it is currently Straight's responsibility to make sure that the bar is covered at all times. Also, on one occasion while King was still present, Straight released a cocktail waitress early without checking with King, who had directed the waitress to work.

Based on the foregoing, and in particular Straight's increased responsibilities regarding scheduling during the regular innkeeper's absence plus the authority he possesses as most senior bartender, the undersigned concludes that Straight is a supervisor within the meaning of the Act. Compare *Dunes Motel*, 124 NLRB 805. Accordingly, it is recommended that the challenge to Straight's ballot be sustained.

Ruth Alice Hancock

The investigation reveals that Ruth Alice Hancock has the title of housekeeper. The previous assistant housekeeper quit in February and, according to Chieffo, Hancock is training a new assistant. The person immediately above Hancock in the hierarchy is Mrs. Fitzpatrick, executive housekeeper. Fitzpatrick has overall responsibility for the housekeeping departments of several Holiday Inns and she spends a certain amount of time at each inn, rotating from place to place. She

Exhibit 4d—Case No. 3-RC-5678.

is usually away from the Employer's inn for a month or two at a time, and last year was absent for the entire year. She has been assigned to the Employer's inn since February 1973 and lives at the inn. When she is stationed at other inns, she is in phone contact with Hancock at least once a week.

In Fitzpatrick's absence, Hancock assumes Fitzpatrick's duties. These include the assignment of maids to sections of rooms and the issuance of orders for the day which she receives from the innkeeper or assistant innkeeper.

Both Fitzpatrick and Hancock perform some duties in common. They each make a baggage report and housekeeping report daily. This involves checking each room to see if it has been cleaned and to determine whether it is occupied. Fitzpatrick and Hancock divide up the rooms, each taking a separate floor. They train new maids as well as assign them to more experienced maids for further training. Each interviews applicants for maid positions—and their separate recommendations appear to be effective most of the time. (Hancock testified that one negative recommendation which she made was rejected, but also testified that fifty percent of the maids had been hired when King told her to interview the applicants and if she found them suitable, to hire them).

Hancock's duties include preparation of a daily work sheet for each maid and delivery of the work sheet to the maid. She checks each room after it is prepared by the maid and checks to see that all items—e.g. soap, matches, etc.—have been replaced. If a maid consistently fails to properly prepare rooms, Hancock speaks to the maid about it. Hancock asserts that if a reprimand or discipline were necessary, she would go to Fitzpatrick or the innkeeper.

Both Fitzpatrick and Hancock are salaried. The maids are hourly paid. The maids work approximately 30 hours per

Exhibit 4d—Case No. 3-RC-5678.

week. Hancock works 42 hours per week. She receives the same benefits as the maids.

Based on the foregoing, and in particular Hancock's responsible direction of the work of the maids and her active role in the interviewing and the hiring of maids, I conclude that she is a supervisor within the meaning of the Act. *Allied Stores of Ohio, Inc.*, 175 NLRB 966; *Holiday Hotel*, 134 NLRB 113; *Yorktowne Hotel*, 126 NLRB 344. Accordingly, it is recommended that the challenge to Hancock's ballot be sustained.

Fleury Richmond

The investigation reveals that Fleury Richmond was first interviewed for a job as kitchen help on March 20. The evidence does not clearly indicate when Richmond was told by management that he was hired but payroll records reveal that his first day of work was March 24. The eligibility date is March 23.

Board precedent is clear that to be eligible to vote, an individual must be both employed and working on the eligibility date. *Barry Controls, Inc.*, 113 NLRB 26. Richmond does not appear on the Employer's payroll until March 24. Accordingly, it is recommended that the challenge to Richmond's ballot be sustained.

THE OBJECTIONS**OBJECTION NO. 1**

In substance, Objection No. 1 alleges that the Petitioner offered to waive initiation fees in the event the Petitioner won the election and that this was coercive conduct.

The investigation reveals that the Petitioner, at a meeting for employees held about one week before the election, in re-

Exhibit 4d—Case No. 3-RC-5678.

sponse to an employee's question about initiation fees, told those present that those persons presently employed would not have to pay initiation fees. In addition, a direct mailing to employees signed by the Holiday Inn Organizing Committee, dated May 8, 1973, states in part: "There is no initiation fee for those employees presently employed and no dues are paid until a contract has been proposed by yourself and ratified by yourself."

The Board has taken the position that whether or not the waiver of initiation fees by a union is expressly conditioned on the outcome of an election, such waivers "have no improper effect on the freedom of choice of the electorate, and do not constitute a basis for setting aside an election." *DIT-MCO, Incorporated*, 163 NLRB 1019, *enf'd.* 428 F. 2d 775 (C.A. 8). Compare *NLRB v. Savair Mfg., Corp.*, 470 F. 2d 305 (C.A. 6), *denying enforcement*, 194 NLRB No. 44. The Supreme Court on May 7, 1973, granted certiorari in the *Savair* case (No. 72-1231, U.S.) on this very issue.

As the Board presently finds that a waiver of an initiation fee by a union does not constitute objectionable conduct, and because as of this time the Supreme Court has not dealt with the issue, the undersigned concludes that this objection does not constitute conduct which warrants setting aside the election. Accordingly, it is recommended that this Objection be overruled.

OBJECTION NO. 2

In substance, this objection alleges that employees received telephone calls from the Petitioner threatening reprisal for failing to vote for the Petitioner. The investigation revealed that some employee and family members of employees received phone calls during the election campaign, however, Petitioner's witnesses stated that the callers did not identify

Exhibit 4g—Case No. 3-RC-5678.

themselves and the recipients of the calls were unable to identify the voices of the callers. In any event, no specific threats of any sort were made, and there is no evidence that the callers were acting on behalf of the Petitioner.

Based on the foregoing, the undersigned concludes that this objection does not raise any material and substantial issue with respect to the election. Accordingly, it is recommended that this Objection be overruled.

SUMMARY

Having recommended that the Challenges be sustained and that the Objections be overruled, the undersigned further recommends that a Certification of Representative issue.

DATED at Buffalo, New York, this 8th day of June, 1973.

THOMAS H. RAMSEY,
Acting Regional Director,
National Labor Relations
Board—Region 3,
Federal Building—Ninth Floor,
111 West Huron Street,
Buffalo, New York 14202.

Exhibit 4g.

Case 3-RC-5678

DECISION AND ORDER DIRECTING HEARING

Pursuant to a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted on May 11, 1973, under the direction and supervision of the Regional Director, among the employees in the stipulated unit. The

Exhibit 4g—Case No. 3-RC-5678.

tally of ballots furnished the parties at the conclusion of the election showed that of approximately 67 eligible voters, 43 cast ballots of which 20 were for and 18 against the Petitioner, and 5 were challenged.¹ The challenged ballots were sufficient in number to affect the results of the election. Thereafter, the Employer timely filed 2 objections to conduct affecting the results of the election.

Pursuant to the Board's Rules and Regulations, the Regional Director conducted an investigation and, on June 8, 1973, issued and duly served upon the parties his Report in which he recommended that the challenges be sustained, that the objections be overruled, and that the Petitioner be certified as the bargaining representative of the employees. Thereafter, the Employer filed exceptions to the Regional Director's finding that Nichols, Straight, and Hancock were supervisors and therefore not entitled to vote. The Employer also took exception to the Regional Director's finding without merit Objection 1 which alleged that the Petitioner's offer to waive initiation fees constituted coercive conduct which interfered with the election.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ John Addabbo, Fleury Richmond, Sandra Ann Nichols, John Leslie Straight, and Ruth Alice Hancock.

Exhibit 4g—Case No. 3-RC-5678.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All waitresses, kitchen help, desk clerks, housemaids, busboys, cooks, dishwashers, maintenance, and bartenders, including regular part-time employees and other housekeeping personnel, excluding all office clerical employees, secretaries, sales personnel, professional employees, guards, all other employees, and supervisors as defined in the Act.

5. The Board has considered the Regional Director's Report and the Employer's exceptions thereto. We adopt his findings and recommendations with respect to the objections and the challenged ballots of Addabbo and Richmond. However, we find that substantial factual issues have been raised concerning the status of Nichols, Straight, and Hancock, and we shall therefore order that a hearing be held to resolve them.

ORDER DIRECTING HEARING

IT IS HEREBY ORDERED that a hearing be held, before a Hearing Officer to be designated by the Regional Director for Region 3, to resolve the issues raised by the challenges to the ballots cast by Sandra Ann Nichols, John Leslie Straight, and Ruth Alice Hancock.

Exhibit 4g—Case No. 3-RC-5678.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting the hearing shall prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within 10 days from the date of issuance of such report, either party may file with the Board in Washington, D.C., an original and seven copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy on the other party, and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the Hearing Officer.

IT IS FURTHER ORDERED that the above-entitled matter be, and it hereby is, referred to the Regional Director for Region 3 for the purpose of conducting such hearing, and that the Regional Director be, and he hereby is, authorized to issue notice hereof.

Dated, Washington, D.C., August 22, 1973.

JOHN H. FANNING,
John H. Fanning, Member,

RALPH E. KENNEDY,
Ralph E. Kennedy, Member,

JOHN A. PENELLO,
John A. Penello, Member,

(Seal)

NATIONAL LABOR RELATIONS
BOARD.

Exhibit 4n.**CASE NO. 3-RC-5678****REPORT AND RECOMMENDATION ON
CHALLENGED BALLOTS**

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director on March 30, 1973, an election by secret ballot was conducted on May 11, 1973, under the direction and supervision of the Regional Director, among employees of the above-named Employer in the following appropriate collective bargaining unit:

All waitresses, kitchen help, desk clerks, housemaids, busboys, cooks, dishwashers, maintenance, and bartenders including regular part-time employees and other housekeeping personnel, excluding all office clerical employees, secretaries, sales personnel, professional employees, guards and supervisors as defined in the Act and all other employees.

A Tally of Ballots served upon the parties at the conclusion of the election showed the following results:

Approximate number of eligible voters	67
Void ballots	0
Votes cast for Petitioner	20
Votes cast against participating labor organization	18
Valid votes counted	38
Challenged ballots	5
Valid votes counted plus challenged ballots	43

The challenged ballots were sufficient in number to affect the results of the election. They were received and segregated in a manner adequate to protect their secrecy.

Exhibit 4n—Case No. 3-RC-5678.

The ballots of *John Addabbo, Sandra Ann Nichols, John Leslie Straight, and Ruth Alice Hancock* were challenged by the Petitioner on the grounds that they were supervisors within the meaning of the Act. The ballot of *Fleury Richmond* was challenged by the Board Agent conducting the election on the grounds that his name was not on the voter eligibility list.

On May 18, 1973 the Employer timely filed objections to conduct affecting the results of the election.

On June 8, 1973, pursuant to an investigation, the Acting Regional Director issued a Report on Challenges and Objections in which he recommended that the 5 challenges be sustained, that the objections be overruled, and that the Petitioner be certified as the collective bargaining representative of the employees.

Thereafter the Employer excepted to the Acting Regional Director's finding that Nichols, Straight, and Hancock were supervisors and therefore ineligible to vote and to the Acting Regional Director's failure to find merit in Employer's objection pertaining to Petitioner's offer to waive initiation fees.

On August 22, 1973 the Board issued its Decision and Order Directing Hearing in which the Board adopted the Acting Regional Director's findings and recommendations as to the objections and the challenged ballots of Addabbo and Richmond; found that substantial factual issues were raised as to the status of Nichols, Straight, and Hancock; and ordered that a hearing be held before a Hearing Officer designated by the Regional Director for Region 3 to resolve the issues raised by the challenges to the ballots of Nichols, Straight, and Hancock and that the Hearing Officer conducting the hearing prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues.

Exhibit 4n—Case No. 3-RC-5678.

Pursuant to the Notice of Hearing on Challenges issued by the Acting Regional Director on August 29, 1973, a hearing was held before the undersigned at Buffalo, New York on September 19 and 20, 1973 and October 10, 1973, at which the parties represented by counsel had the opportunity to present witnesses and other evidence relating to the 3 remaining challenges and to state their respective positions on the issues.

Sandra Ann Nichols

In July 1971, Sandra Ann Nichols began her employment at Employer's Inn as a waitress paid \$1.22 an hour and in April 1972 became a hostess-cashier in the Inn's restaurant at an hourly rate of \$1.77. On or about May 1, 1973 she gave notice of her intention to quit her job and, in fact, quit on or about May 15, 1973.

The restaurant has two full-time hostess-cashiers, one on the 7:00 AM to 3:00 PM shift and another on the 3:00 PM to 11:00 PM shift, with 1 or more part-time hostess-cashiers according to seasonal requirements.

Mrs. Nichols' duties as hostess-cashier included greeting restaurant patrons, seating them at tables, handing them menus and seeing to it that they were served. She assigned the 3-6 waitresses to their respective stations in the dining room, provided them with restaurant checks, and received payment from the restaurant patrons. She prepared weekly work schedules for the waitresses after consultation with the innkeeper, changed those weekly schedules without notifying the innkeeper, and gave waitresses time off.

Mrs. Nichols had authority to interview prospective waitresses and tell them to report for work without prior consultation with the innkeeper. She exercised that authority on at least 12 occasions. She assigned waitresses to serve at ban-

Exhibit 4n—Case No. 3-RC-5678.

quests, and the innkeeper ordinarily approved her choice. It does not appear from the record that Mrs. Nichols had authority to discipline waitresses. Her posting the notice warning waitresses about tardiness was done with the concurrence of innkeeper King and constituted no independent exercise of authority to discipline employees. Although I find that Mrs. Nichols fired neither Ann Parisi nor Ricky Booth, in one instance Mrs. Nichols effectively recommended the discharge of a waitress for violation of the notice on tardiness.

Mrs. Nichols distributed paychecks to waitresses and granted them time off; but it does not appear her direction of their work was other than routine. Her insurance fringe benefits were no greater than the waitresses!

Mrs. Nichols interviewed prospective waitresses Pat Rose and Mary Stroble and, finding them acceptable, told them to report for work without clearance by the innkeeper. Innkeeper King himself credibly testified to the existence of such authority on Mrs. Nichols' part. In at least 12 instances Mrs. Nichols effectively recommended the hiring of prospective waitresses. Under these circumstances it is recommended that Sandra Ann Nichols be found to have been a supervisor within the meaning of Section 2(11) of the Act and ineligible to vote in the representation election of May 11, 1973. *Eastman Broadcasting Company*, 188 NLRB 80, 81; *Sopps, Inc.*, 175 NLRB 296; *The Lawson Milk Company*, 143 NLRB 916.

John Leslie Straight

In December 1971, John Leslie Straight entered the employ of the Employer as a part-time bartender at the Inn. He became a full-time bartender there in January 1972 and, before and after the representation election of May 11, 1973, worked 5 nights and 2 days a week. On Friday and Saturday

Exhibit 4n—Case No. 3-RC-5678.

nights part-time bartenders worked with Straight; another regular bartender worked days. As senior bartender Straight earned \$2.25 an hour whereas the other bartenders' hourly rate was \$2.00. Straight reported directly to the innkeeper.

At the Inn most parties and social functions requiring special liquor service took place at night when Straight was on duty. As a consequence, he and the innkeeper conferred on the need for extra help to man the bar during those parties.

When Straight himself was unable to cover the absence of a bartender scheduled to work at the Inn, he informed the innkeeper or assistant innkeeper. Straight once prepared, at the request of the innkeeper, a schedule of bartenders' working hours and assured a bartender returning from sick leave that he would return to his former place. However, those actions did not constitute an exercise of supervisory authority by Straight. Neither did Straight's several times having allowed cocktail waitresses to go home early when business was slow. *Don The Beachcomber*, 163 NLRB 276. Straight lacked authority to hire, fire or discipline employees. He had no authority to purchase liquor on Employer's account. Cf. *Denny's Restaurant No. 3*, 177 NLRB 702, 703.

On the basis of the above factors and the record as a whole, it is recommended that John Leslie Straight be found not to have been a supervisor under the Act and to have been eligible to vote in the election in the instant case.

Ruth Alice Hancock

On June 29, 1971 Ruth Alice Hancock was hired to do cleaning at the Inn in preparation for its opening. After the Inn was opened she was employed there as a maid and cleaned guest rooms at the Inn under the supervision of the housekeeper Leola Fitzpatrick.

Exhibit 4n—Case No. 3-RC-5678.

Maids at the Inn receive \$1.85 an hour, are paid for overtime, and are eligible for group hospitalization insurance. Except when business at the Inn is down because of seasonal factors, the maids work from 30 to 35 hours a week. Ten maids are sufficient to clean the guest rooms on days when the Inn is operating at full capacity. There are 4 other maids working on the 10 maids' days off.

Mrs. Fitzpatrick left Employer's Inn at Dunkirk-Fredonia late in 1971 in order to open another Inn. Before leaving, Mrs. Fitzpatrick selected Mrs. Hancock and two others to learn the housekeeper's duties. Mrs. Hancock was present when Mrs. Fitzpatrick interviewed applicants for maids' jobs and was appointed acting housekeeper at a weekly salary of \$80 to act in the absence of Mrs. Fitzpatrick who received a weekly salary of \$150.00 plus certain benefits not available to Mrs. Hancock, namely, room and board at the Inn and major-medical insurance coverage. At the time of Mrs. Hancock's appointment as acting housekeeper, Mrs. Fitzpatrick urged Mrs. Hancock to contact her by telephone if problems arose at Employer's Inn while Mrs. Fitzpatrick was away. During Mrs. Fitzpatrick's 13-month absence from Employer's Inn at Dunkirk-Fredonia there were weekly telephone consultations between Mrs. Fitzpatrick and Mrs. Hancock. The matter of interviewing applicants for maids' jobs did not come up in these telephone consultations. During that period Mrs. Hancock also consulted with innkeeper King concerning details of the housekeeping operation.

The housekeeper's duties undertaken by Mrs. Hancock during the 13-month absence of Mrs. Fitzpatrick included obtaining from the front desk, each morning, the night auditor's and desk clerk's reports showing rooms occupied the previous night, checkouts, expected checkouts and stayovers and assigning rooms to maids for cleaning. Later in the day the

Exhibit 4n—Case No. 3-RC-5678.

housekeeper indicated on a housekeeping daily report which rooms had been cleaned and prepares for submission to the front desk a baggage report showing room occupancy at checkout time. An important aspect of the housekeeper's daily operations was the inspection of rooms cleaned and supplied by the maids. After inspection the housekeeper told the maids if their work has not met Holiday Inn standards and asks that they correct any room falling short of the standards.

During the 13-month absence of Mrs. Fitzpatrick and after Mrs. Fitzpatrick's return to Employer's Inn on February 21, 1973 to resume her duties as head of housekeeping, Mrs. Hancock wore a maid's uniform and herself cleaned part or all of certain rooms that she inspected. By contrast, Mrs. Fitzpatrick has not cleaned rooms at the Inn and wore ordinary-apparel. Mrs. Hancock did not purchase supplies for the Inn as Mrs. Fitzpatrick had done previously. During Mrs. Fitzpatrick's absence Mrs. Hancock prepared a vacation schedule for maids, subject to innkeeper King's approval and granted maids time off for illness.

During the 13-month absence of the housekeeper Mrs. Fitzpatrick, 10 maids were hired at Employer's Inn. Mrs. Hancock interviewed 5 of the applicants for maids' jobs. These interviews consisted of showing applicants the differences between a guest room in disarray and one properly made up, determining the applicant's availability for work by reason of family situation, telephone, and transportation and her willingness to perform the job.

In 3 instances during the same period Mrs. Hancock was authorized by the innkeeper or assistant innkeeper to interview the job applicants and, if she found the applicant acceptable, to tell the latter to report for work. In the 2 other interviews Mrs. Hancock effectively recommended to innkeeper King that the applicants be hired.

Exhibit 4n—Case No. 3-RC-5678.

Shortly after Mrs. Fitzpatrick returned to Employer's Inn on February 23, 1973, she announced to the maids that they were to bring their problems on the job to her, and not to the innkeeper. She did not expressly announce to the maids that Mrs. Hancock was demoted or her authority diminished in any particular. Both Mrs. Fitzpatrick and Mrs. Hancock inspected rooms, made out housekeeping reports and assignments, and interviewed applicants for maids' jobs. Mrs. Hancock remained on salary, took Mrs. Fitzpatrick's place on the latter's days off and continued to exercise authority to interview job applicants and to tell them to report for work if she found their qualifications suitable. After her return on February 23, 1973 Mrs. Fitzpatrick interviewed most applicants.

Although the scope of Mrs. Hancock's authority was necessarily preempted to some extent with the return of Mrs. Fitzpatrick, I find that Mrs. Hancock retained the authority to hire or effectively recommend hiring, to inspect rooms and give directions to maids. Accordingly, it is recommended that she be found to have been a supervisor within the meaning of Section 2(11) of the Act and ineligible to vote in the May 11, 1973 representation election. *Island Holidays, Ltd. d/b/a Coco Palms Resort Hotel*, 201 NLRB No. 82, p. 6; *Howard Johnson Company*, 201 NLRB No. 52, pp. 9-11; *Crumley Hotel, Inc. d/b/a Holiday Hotel*, 134 NLRB 113, 117. Certain Board cases holding assistant housekeepers to be nonsupervisory lack the element of independent judgment in interviewing applicants. *Oklahoma Inn d/b/a Holiday Inn of Henryetta*, 198 NLRB No. 68, pp. 24-25; *Holiday Inn of Dayton*, 192 NLRB 674, 675 fn. 5; *LaRonde Bar & Restaurant, Inc.*, 145 NLRB 270, 272.

Exhibit 4r—Case No. 3-RC-5678.

RECOMMENDATION

For the reasons indicated above it is recommended that the ballot of *John Leslie Straight* be opened and counted and that a Revised Tally of Ballots reflecting the final election results and a Certification of Representative be issued.

Dated at Detroit, Michigan, this 25th day of October, 1973.

/s/ L. W. Tucker,

.....
L. W. TUCKER,
Hearing Officer,
National Labor Relations Board.

Exhibit 4r.

Case 3-RC-5678

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on May 11, 1973, under the direction and supervision of the Regional Director, among the employees in the stipulated unit.¹ The tally of ballots furnished the parties at the conclusion of the election showed that of approximately 67 eligible voters, 43 cast ballots of which 20 were for and 18 against the Petitioner, and 5 were challenged.² The challenged ballots were sufficient in

¹ Eligible to vote were those who were employed during the payroll period ending March 23, 1973.

² John Addabbo, Fleury Richmond, Sandra Ann Nichols, John Leslie Straight, and Ruth Alice Hancock.

Exhibit 4r—Case No. 3-RC-5678.

number to affect the results of the election. Thereafter, the Employer timely filed two objections to conduct affecting the results of the election.

Pursuant to the Board's Rules and Regulations, Series 8, as amended, the Acting Regional Director conducted an investigation and, on June 8, 1973, issued and duly served on the parties his report in which he recommended that the challenges be sustained, the objections be overruled, that the Petitioner be certified as the bargaining representative of the employees. Thereafter, the Employer filed exceptions to the Acting Regional Director's finding that Nichols, Straight, and Hancock were supervisors and were therefore not entitled to vote. The Employer also took exception to the Acting Regional Director's failure to find merit in Objection 1 which alleged that the Petitioner's offer during the week preceding the election to waive the initiation fee for "those employees presently employed" constituted coercive conduct that interfered with the election.

On August 22, 1973, the Board issued a Decision and Order³ adopting the Acting Regional Director's findings and recommendations with respect to the objections and the challenged ballots of Addabbo and Richmond and directing a hearing on the challenged ballots of Nichols, Straight, and Hancock.

A hearing was held on September 19 and 20 and October 10, 1973, before Hearing Officer L. W. Tucker. Both Employer and the Petitioner participated and were given full opportunity to examine and cross-examine witnesses and to introduce evidence bearing upon the issues.

On October 25, 1973, the Hearing Officer issued his report in which he found that Straight was an employee and that

³ Unpublished.

Exhibit 4r—Case No. 3-RC-5678.

Nichols and Hancock were supervisors within the meaning of the Act. He therefore recommended that the challenge to Straight's ballot be overruled and that the challenges to the ballots of Nichols and Hancock be sustained. He further recommended that Straight's ballot be opened and counted and that a revised tally of ballots and certification of representative be issued.

Thereafter, the Employer filed exceptions to the Hearing Officer's report and a supporting brief in which it "reasserts" Objection 1 and also argues that Nichols and Hancock were employees rather than supervisors. The Petitioner filed a brief in opposition to the Employer's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

The Board has considered the Hearing Officer's report, the exceptions, the briefs,⁴ and the entire record in this proceed-

⁴ As indicated above, the Employer in its brief "reasserts" its objection concerning the Petitioner's offer to waive the initiation fee for those presently employed. This offer was not conditioned upon the expression by any employee of support for the Union in any form during the electoral process. Moreover, any denial of the waiver to new employees hired after the date of the offer could not have affected the election because said employees would not have been eligible to vote in the election. Accordingly, we find that the waiver does not fall within the proscription of the Supreme Court's decision in *N.L.R.B. V. Savair Mfg. Co., U.S.*, 94 S. Ct. 495 (December 17, 1973). We therefore affirm our holding as to the propriety of the Acting Regional Director's finding that the waiver did not interfere with the election. See *Endless Mold, Inc.*, 210 NLRB No. 34.

Exhibit 4r—Case No. 3-RC-5678.

ing, and hereby adopts the Hearing Officer's finding and recommendations, as modified below.⁵

We agree with the Hearing Officer that Assistant Housekeeper Hancock is a supervisor within the meaning of the Act. The record is clear that Hancock, who is salaried and receives no overtime pay, oversees the work done by the maids assigned to one of the two floors of the motel,⁶ inspects the rooms which they clean, exercises independent judgment in ordering the maids to correct the deficiencies in their work,⁷ grants time off to maids and replaces them in the event of illness, participates in interviewing applicants whose qualifications she discusses with the housekeeper, regularly replaces and performs the functions of the housekeeper on her days off, and attends managerial meetings.⁸

In view of the foregoing, particularly Hancock's authority to order maids to take corrective action when she deems it necessary, we find that Hancock responsibly directs the maids in the performance of their work. Accordingly, we conclude in agreement with the Hearing Officer that the challenge to

⁵ Although we agree with the Hearing Officer's conclusion that Straight is an employee and was therefore eligible to vote, we do not adopt the recommendation that Straight's ballot be opened and counted as his vote would not affect the results of the election. Accordingly, we shall issue a Certification of Representative on the basis of the Acting Regional Director's tally of ballots which shows that the Petitioner received a majority of the valid votes cast.

⁶ Innkeeper Ken King testified that Hancock or Housekeeper Leola Fitzpatrick, an acknowledged supervisor, "makes the initial decision" as to assignments.

⁷ Similarly, Fitzpatrick is in charge of the maids working on the other floor.

⁸ Although Hancock's testimony was uncertain on this point, both Fitzpatrick and King testified unequivocally as to Hancock's presence at these meetings.

Exhibit 4r—Case No. 3-RC-5678.

the ballot of Hancock was properly sustained in view of her position as a supervisor.⁹

Our dissenting colleague obscures the issue by labeling as "routine" the duties which Hancock performs with respect to overseeing the maids' work and giving orders to them. The test of responsible direction does not depend on the complexity and difficulty of the maids' work or of the corrective measures invoked by Hancock. Adoption of that test would unrealistically rule out a finding of responsible direction in all situations where the work involved does not require a high degree of skill and technical competence. The proper test, which is met herein, is that Hancock exercises independent judgment without consultation with the housekeeper in ascertaining the deficiencies in the maids' work, however prosaic and uncomplicated, and utilizing the authority to order that the work be done correctly.

Although our colleague also points out that Hancock does some cleaning work, the fact does not render nugatory our finding as to Hancock's supervisory status which is based on the undisputed evidence that she devotes her time principally to the duties described above.¹⁰

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive

⁹ *Island Holidays, Ltd. d/b/a Coco Palms Resort Hotel*, 201 NLRB No. 82; *Howard Johnson Company*, 201 NLRB No. 52.

¹⁰ In this connection, it is noteworthy that Fitzpatrick sometimes places missing supplies in a room and also does cleaning work at times.

Exhibit 4r—Case No. 3-RC-5678.

representative of all the employees in the unit found appropriate in paragraph 4 of the Decision and Order for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

Dated, Washington, D.C. JUN 12 1974

.....
John H. Fanning, Member.

.....
John A. Penello, Member,
NATIONAL LABOR RELATIONS
BOARD.

(SEAL)

CHAIRMAN MILLER, concurring in part and dissenting in part:

I cannot agree with my colleagues' finding that Ruth Alice Hancock is a supervisor within the meaning of Section 2(11) of the Act which defines the term supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical in nature, but requires the use of independent judgment.

This provision requires that, to be a supervisor, one must have authority to exercise independent and effective judgment in *at least one* of the areas of authority enumerated.

Exhibit 4r—Case No. 3-RC-5678.

In my view, the record here shows that Hancock has no such authority in any of the said areas.

My colleagues find that Hancock is in charge of a crew of maids, exercises independent judgment in ordering maids to correct deficiencies in their work, and grants them time off in the event of illness. I find nothing in the record to support the finding that Hancock is in charge of a crew of maids or, indeed, that maids were assigned in crews. Rather it appears that the housekeeper, not Hancock, assigned each maid to prepare certain rooms; and Hancock was assigned to inspecting rooms on one floor. In addition Hancock performed maid's work and other routine chores such as counting linen. The inspection chore consisted of checking the rooms to insure that each was clean and contained all the prescribed articles; such as, stationery, fly swatter, and informational materials. If the inspection revealed that the room did not meet the Inn's standard of cleanliness, Hancock would either clean it herself or tell the maid responsible for the room that a sink was dirty or a mirror needed cleaning. She could not, however, discipline or reward employees or effectively recommend such action. Nothing in this inspection process required the use of independent judgment in the direction of work.¹¹ In fact nothing could be more routine. The record also reveals that Hancock was not entrusted with discretion in granting or denying requests for time off due to illness. It was apparently the Inn's policy to require the maids to notify someone, even another maid, in the event they would be unable to report for work. Similarly, Hancock testified that on one occasion a maid reported to her that she would be unable to continue working because of illness. There is no

¹¹ Cf. *LaRonde Bar & Restaurant Inc. and/or Carrousel Motels, Inc.*, 145 NLRB 270, 272; *Janesville Auto Transport Company*, 193 NLRB 874.

Exhibit 4r--Case No. 3-RC-5678.

evidence that Hancock was authorized to approve this absence; she was merely to report it to the housekeeper.

My colleagues also find that Hancock regularly replaced the housekeeper on her days off, but fail to note that on these occasions she did not assume the supervisor authority of the housekeeper. The housekeeper resided at the Inn and was usually available when necessary. In her absence, any unusual problem which would require the attention of a supervisor was taken to the innkeeper or the assistant innkeeper. Hancock simply assumed the routine chores of the housekeeper, such as picking up the room reports from the front desk.

By noting that Hancock participated in interviewing applicants, my colleagues apparently find, as did the Hearing Officer, that Hancock possesses the authority to hire or effectively recommend hiring. In my view, such a finding is completely at odds with the record evidence. Thus, Innkeeper King, Housekeeper Fitzpatrick and Hancock all testified without contradiction that, since Fitzpatrick's return to the Inn, Hancock had no authority to hire or fire.¹² While Hancock may have been present during employment interviews conducted by Fitzpatrick, her only function was to show the prospective applicant a dirty room and a clean room to demonstrate the nature of the work. She might also have been asked if she knew the applicant's reputation in the community, but her views on whether an applicant should be hired were neither solicited nor offered. In these circumstances, the conclusion that Hancock did not possess the authority to effectively recommend hiring seems inescapable.

Like other maids, Hancock wore a uniform, participated in the employee insurance program, and had the same lunch

¹² Any authority Hancock may have had while acting as housekeeper is not relevant to the determination of her current status.

Exhibit 4r—Case No. 3-RC-5678.

period.¹³ Although maids generally were hourly paid, Hancock received a salary. However, her weekly salary amounted to little more than a maid's weekly pay and was slightly less than half the weekly salary paid the housekeeper. Although my colleagues find that Hancock attends managerial meetings, Hancock testified she could not recall ever attending such a meeting since Fitzpatrick returned. It is also apparent from the testimony of the only maid who testified that Hancock was not regarded as a supervisor after Fitzpatrick's return.

In sum, I find nothing in the record which could support a finding that Hancock is a statutory supervisor. To the contrary, it appears that Hancock is a very efficient maid, willing to perform the worst job that other maids refuse, and capable of performing additional routine tasks to assist the housekeeper. Cf. *Dayton Motels, Inc. d/b/a Holiday Inn of Dayton*, 192 NLRB 674, 675.

Accordingly, in my view, the election results are still in doubt and the certification is being issued prematurely.

Dated, Washington, D. C. JUN 12 1974

.....,
Edward B. Miller, Chairman,
NATIONAL LABOR RELATIONS
BOARD.

¹³ She did not enjoy the privileges provided the admitted supervisors; such as, company paid major medical insurance and free room and board.

[1] **Excerpts of Stenographic Testimony
at Hearing September 19, 1973.**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
Third Region**

**In the Matter of:
DUNKIRK MOTOR INN, INC.
d/b/a HOLIDAY INN OF
DUNKIRK-FREDONIA
Employer**

and

**AMALGAMATED MEATCUTTERS AND BUTCHER
WORKMEN OF NORTH AMERICA,
LOCAL 34, AFL-CIO
Petitioner**

Case No. 3-RC-5678

**Hearing Room, Ninth Floor,
Federal Building, 111 W. Huron St.,
Buffalo, New York,
Wednesday, September 19, 1973.**

**The above-entitled matter came on for hearing, pursuant to
Notice at 10:00 o'clock, A.M.**

Before: L. W. TUCKER, ESQ., *Hearing Officer.*

Appearances:

**Carl B. Newsome, Esq., 111 W. Huron Street, Buffalo, New
York 14202, appearing on behalf of the Regional Director.**

*Excerpts of Stenographic Testimony at Hearing,
September 19, 1973—Case No. 3-RC-5678.*

John B. Drenning, Esq., Moot, Sprague, Marcy, Landy, Fernbach & Smythe, Suite 2300, Two Main Place, Buffalo, New York 14202, appearing on behalf of the Employer.

[2] Richard Lipsitz, Esq., Lipsitz, Green, Fahringer, Roll, Schuller & James, One Niagara Square, Buffalo, New York 14202, appearing on behalf of the Petitioner.

* * *

[4] **PROCEEDINGS.**

Hearing Officer Tucker: The hearing will be in order. This is a formal hearing before the National Labor Relations Board in Dunkirk Motor Inn, Inc., d/b/a Holiday Inn of Dunkirk-Fredonia, Case No. 3-RC-5678.

The Hearing Officer is L. W. Tucker.

We are here pursuant to a Notice of Hearing on challenges in 3-RC-5678 which issued August 29th, 1973.

Will the parties please state their appearances for the record. For the Petitioner?

Mr. Lipsitz: Lipsitz, Green, Fahringer, Roll, Schuller & James, by Richard Lipsitz, One Niagara Square, Buffalo, New York 14202.

Hearing Officer: For the Employer?

Mr. Drenning: Moot, Sprague, Marcy, Landy, Fernbach & Smythe, by John B. Drenning, Suite 2300, Two Main Place, Buffalo, New York, 14202.

Hearing Officer: And is there Counsel for the Region?

Mr. Newsome: Carl B. Newsome, 111 W. Huron Street, Buffalo, New York.

Hearing Officer: From the nature of the case, there are, of course, no other appearances here. [5] The only parties are

Offer of Counsel.

Employer and Petitioner. From an inspection of the report on challenges and objections in 3-RC-5678, it appears that there were certain challenges made to the ballots of Nichols, Straight and Hancock and that Petitioner was the party claiming that those named persons are supervisors under Section 211 of the Act. Is that correct, Mr. Lipsitz?

Mr. Lipsitz: Yes, sir.

Hearing Officer: Mr. Lipsitz, do you wish to make some kind of preliminary statement?

Mr. Lipsitz: No, Mr. Hearing Officer. I think the Regional Director's report and recommended order sets forth the issues. There are three employees concerning whom the Board has sent this matter back to have an evidentiary hearing. Our view is that each of them, as the Regional Director recommended, is a supervisor and that's the whole case.

Hearing Officer: Mr. Drenning, do you have anything to add to that?

Mr. Drenning: No, except to note my disagreement. No, I would waive preliminary statement.

Hearing Officer: All right. Mr. Newsome, do you wish to enter or offer the formal papers in this matter?

[6] Mr. Newsome: Yes. I offer into evidence the formal papers. They have been marked for identification as Board's Exhibit 1(a) through 1(f) inclusive, Exhibit 1(f) being an index and description of the entire exhibit. This exhibit has already been shown to all the parties.

* * *

Hearing Officer: Is there any objection to the receipt into evidence of Exhibits 1(a) through 1(f), the formal papers?

Mr. Mr. Lipsitz: No, sir.

Hearing Officer: Mr. Drenning?

K. King, for Employer, Direct.

Mr. Drenning: No objection.

[7] Hearing Officer: The formal papers are received.

(The documents above-referred to, were marked Regional Director's Exhibits 1(a) through 1(f) and were received into evidence)

* * *

[8] KEN KING was called as a witness by and on behalf of the Employer and, after having been first duly sworn, was examined and testified as follows:

Hearing Officer: Please sit down. Again, would you state your name for the record.

The Witness: Ken King, Innkeeper, Holiday Inn, Dunkirk-Fredonia.

DIRECT EXAMINATION:

Q. (By Mr. Drenning) Mr. King, so we can be clear on the arrangements between the various Holiday Inns and the Federated Home and Mortgage, would you describe the ownership of this particular Holiday Inn, the one in Dunkirk-Fredonia? A. Yes. This Holiday Inn is owned and operated by Federated Home and Mortgage out of Pennsylvania.

Q. Are there a number of Holiday Inns operated by Federated? A. Yes, ten owned and two under construction.

Q. Would you state your employment, please? A. I've been employed as Innkeeper of the Holiday Inn in Dunkirk two years and three months. Prior to [9] that, I was Innkeeper in Sunberry, Pennsylvania, for two years and prior to that I was Assistant Innkeeper at the Holiday Inn in Batavia, New York, for two years and a half.

Q. The earlier employments, were they as Innkeeper for

K. King, for Employer, Direct.

Holiday Inn owned chains owned by Federated? A. Yes, they were.

Q. You indicated that your employment had been for some two years or more at this Holiday Inn? A. Correct.

Q. Would you describe your recent illness and when that took place? A. My illness occurred on February 17th when I suffered a heart seizure and I did not return to work until the first week in June.

Mr. Lipsitz: What year is that, Mr. Drenning?

Q. (By Mr. Drenning) That would be 1973? A. Correct.

Q. And that was about the time that the election petition was filed? A. Yes, it was shortly after the election petition was filed.

Q. And who acted for you as Innkeeper at the Holiday Inn? A. For a period of two weeks, Mr. Perrigo, my Assistant, tried to make do the best he could and [10] then Mr. Chieffo.

Q. Would you describe the duties of the Innkeeper, please, in general terms? A. The Innkeeper has complete responsibility for the property and complete responsibility confined to the areas of the front desk, housekeeping, dining room, the lounge, in every aspect of the business.

Q. Do you have assistants in this area of supervision? A. Yes, I do, two assistants.

Q. First, would you describe them, your assistants or management people, whichever you prefer? Would you describe them in descending order, by descending in order of authority? A. Mr. Perrigo is in charge of the front desk and the front of the house operation. He's my own assistant manager. The other assistant manager, Mr. Killion, participates with the chef in the food preparation of the banquets. Then I have a housekeeper that takes care of the housekeeping department.

K. King, for Employer, Direct.

Q. So we can be clear, the words "manager" and "innkeeper" are synonymous, are they? A. Yes, they are.

Q. Do you now have a sales person so-called? A. The assistant manager, Mr. Killion, is taking the function of. . .

[11] Mr. Lipsitz: What's this man's name?

The Witness: This man's name. . .

Mr. Drenning: Killion.

The Witness: K-i-l-l-i-o-n.

Q. (By Mr. Drenning) And he now occupies the role of assistant innkeeper? A. Right, in charge of the sales area.

Q. Mr. Killion was not occupying this role during the early part of 1973, let's say from January through May? A. No, he was not.

Q. When did he become employed at this Holiday Inn? A. This was during the time of my illness. I don't know the exact date.

Q. So he was, Mr. Killion was so employed in this capacity we've just described during the time of the election? A. No, not during the time of the election, I don't believe.

Q. When did he first come to the Holiday Inn? A. During my illness.

Q. That was the period just preceding the election? A. Correct.

Q. Would you continue on then after the assistant innkeepers, who's next in authority? [12] A. That would be the housekeeper.

Q. Well, why don't you describe the housekeeper's operation. A. The housekeeper is in charge of the room operations and as far as getting the maids organized for daily work as far as supervising the department, the cleanliness of the rooms, taking into consideration the requirements of Holiday Inn, Inc., and there are various things that must go

K. King, for Employer, Direct.

into rooms like stationery, so many towels, and all of these are requirements. There are several sheets that are required of the housekeeper to provide the necessary articles for the guests. She's also in charge of supplies of inventory of the linen and in hiring in some cases the employees.

Q. And who occupies that position currently? A. Mrs. Fitzpatrick.

Q. And how long has she occupied that job? A. Since February.

Q. Would you describe the involvement of the chef, if you will, please? A. The chef has the responsibility of the food operation and more especially the kitchen and purchasing and the labor cost and food cost of the operation. He works very closely with the innkeeper [13] in maintaining a profit in this area and controlling all expenses to the best of his ability.

Q. Now, your salary. . .you are salaried? A. Yes, I am.

Q. Do you receive additional compensation not received by regular employees in the bargaining unit? A. What type of compensation?

Q. Well insurance, for example. A. Yes, my insurance is greater than the employees.

Q. What kind of insurance is that? A. It's major medical insurance.

Q. Will there be life, for example? A. Life insurance on this, too.

Q. Are those two items of insurance paid to regular employees in the bargaining unit? A. No.

Q. When I say people in the bargaining unit, I mean those people actually eligible to vote. A. Yes.

Q. Again, we're speaking of those people who receive the extra insurance benefits you described. A. The extra insurance benefits would go to the assistant innkeeper, to the housekeeper, to the chef and to myself.

K. King, for Employer, Direct.

Q. And those extra insurance benefits. . . by the [14] housekeeping, you mean Mrs. Fitzpatrick? A. Right.

Q. Who's Mrs. Hancock? A. Mrs. Hancock is employed by us and she acts in the form of an assistant housekeeper. She assists Mrs. Fitzpatrick in her duties.

Q. Does Mrs. Hancock receive the extra insurance? A. No, she does not.

Q. Would you spend a moment, please, and describe the chef's compensation relative to the dining room and the waitresses and their personnel arrangement? A. The chef has a unique role as far as the kitchen operations. He must meet a standard of 29% labor cost and 38% food costs.

Q. Slow down a little bit. A. Okay.

Q. Go ahead. A. This is based on his ability to purchase wisely and his ability to control labor.

Q. And where would he be concerned with respect to numbers of personnel? A. He would be concerned directly in the kitchen but also would be very influential in the dining room and usually our chefs have had considerable more experience in the food and beverage operation than [15] other employees that we may have in this area.

Q. So, summarizing, his concern would be that labor costs would be too high relative to sales? A. Correct.

Q. And that he would not receive a bonus if that situation prevailed? A. Right.

Q. So his interest is to reduce labor costs relative to sales? A. Correct.

Q. And in this case, with whom does he consult with respect to selections of waitresses, hostesses and that sort of thing? A. With me and the assistant innkeeper, the sales representative and the hostess-cashier.

Q. Would his interest in personnel extend beyond the dining room and kitchen? A. No, not for. . . not practically, no.

K. King, for Employer, Direct.

Q. So would you include the job categories that would affect him then, waitress. . . A. Waitress would affect him.

Q. The hostess-cashier? A. Yes, the bus boy would affect him, banquet waitresses would affect him. Of course, the dishwashers, pot washers, salad people, cooks, all of these areas.

[16] Q. Would bartending affect him? A. No, it would not.

Q. As to these people, does he consult with the innkeeper and assistant innkeeper and others in management to establish equitable workloads and so on? A. Yes, he does.

Mr. Drenning: Mr. Hearing Officer, so we can be clear, I'd like to now devote some time to the areas of concern within the inn, the front desk, the kitchen, housekeeping, dining room and bar.

Q. (By Mr. Drenning) Now, first, Mr. King, would you discuss the front desk, who works there, the kinds of people that work there and the supervision, the chain of command, if you will? A. The front desk operation is a 24-hour a day operation. We have three shifts, one at 7:00 to 3:00, one 3:00 to 11:00 and one is 11:00 to 7:00. Depending on the season, we'll always have one clerk there, sometimes two, sometimes one and a half. The assistant innkeeper, Mr. Perrigo supervises this directly and takes care of the nature of guests complaints and what we call the front of the house or the guest arriving. The clerks duties are mostly clerical as far as making advance reservations, taking in the money from the guests, everything to do with the guest charges as far [17] as posting goes.

Q. Would you describe the function of the auditor, I believe they're called? A. He would be responsible for completing the sales report and taking every day sales and

K. King, for Employer, Direct.

recording them as to how much money was taken in in income in food, rooms. . . .

Q. It's essentially a bookkeeping operation? A. Right.

Q. And to whom do those people report, or for whom do they work? A. I'm directly responsible for them but they channel their problems they may have through Mr. Perrigo.

Q. Now, the kitchen, just briefly, the various personnel involved and the approximate numbers of each, chefs, cooks, whatever? A. The chef cooks. There's a first cook, cook's helper, salad people, dishwasher and pot washers.

Q. And the chain again, to whom do those people report? A. These people would report directly to the chef.

Q. And to whom does he report? A. Directly to me.

[18] Q. In this communication to you, may he deal with the assistant innkeeper occasionally? A. With the assistant innkeeper and with the sales representative.

Q. And their discussion would be relative to numbers of personnel? A. Numbers of personnel.

Q. What else, menu selection? A. Menu selection, up and coming events, changing of dining room hours, specials that the chef may have, things of this nature.

Q. Then the housekeeping function, please, numbers and kinds of personnel employed there and their supervision? A. The housekeeping, there's the housekeeper, assistant housekeeper and maids. Maids and the assistant housekeeper, they work together to clean the rooms at the housekeeper's direction. Each is supplied with a section. They have carts for each section. And they get the daily lists of the rooms in this section to be done. They have to record the amount of linen that goes in and out of the rooms, take care of the supplies, clean on an average of 14 to 15 rooms per day depending, of course, on the status of the room.

[19] Q. Did you mention housemen? A. Yes, there's also

K. King, for Employer, Direct.

two housemen that carry the linen and do some yard work and do most of the lugging that's involved.

Q. The current housekeeper is whom? A. Mrs. Fitzpatrick.

Q. And to whom does she report? A. To me.

Q. And does she have any dealings or involvement with the assistant innkeeper? A. Yes.

Q. Only in your absence or on what occasions? A. Usually in my absence but the assistant innkeeper inspects rooms with the housekeeper to become more involved in this area. Also the housekeeper would be able to point out maintenance problems to the assistant innkeeper so he can more readily make. . .more readily bring that to my attention.

Q. Mrs. Hancock is in this department with which she's concerned and she is one of the challenged ballots? A. Yes.

Q. Then the dining room function. Would you describe briefly who are the personnel and to whom do they report? [20] A. The dining room is composed of hostess-cashiers, sometimes one, sometimes two, and waitresses, both at breakfast and at lunch and dinner, and bus boys.

Q. How many hostess-cashiers are there? A. It would depend on the season. We'd always have one for each shift, one 7:00 to 3:00 and one 3:00 to 11:00 or 3:00 to 5:00 with the exception of maybe during the off season where we might eliminate a hostess-cashier during 3:00 to 5:00 or on slow days and hostess-cashiers would report directly to me and would also be in contact with the sales representative and/or the assistant innkeeper.

Q. And likewise the chef? A. And the chef, right.

Q. Mrs. Nichols, one of the persons challenged, is likewise in this category of hostess-cashier? A. Right.

Q. Then, finally, the bar, explain the personnel in the bar and to whom they report? A. The bar is one of the smoothest

K. King, for Employer, Direct.

operations that we have being a small inn. The bar is open from 11:00 in the morning until 1:00 in the evening with the exception of Sunday. And we have a minimum of two bartenders, one day bartender and one night bartender. Both of these people are full-time employees. And then [21] we have part-time employees that take days off and help with extra business that we may have and banquets and so forth.

Q. And to whom do the bartenders report? A. Directly to me. In my absence, to the assistant innkeeper.

Q. Does the innkeeper who's . . . well, is the sales person or the innkeeper, assistant innkeeper, get involved in the bar function? A. Yes, as far as preparing liquor or beverage requirements for parties, may discuss this with him, may discuss it with the other innkeeper, making the punches, stuff like this.

Q. Is there anything additional you want to add of this overview of the inn? We've completed, I hope, the basic breakdowns of the inn and how it operates. Is there any other department we have overlooked? Well, maintenance, for example. A. Well, maintenance department, maintenance men work directly with me and he also works with the housekeeper, of course, to combat daily routine problems and so forth.

Q. Does that constitute all the departments? A. Yes.

Q. Would you return to the question of the dining [22] room and, more particularly, the hostess-cashier. I believe you indicated in earlier testimony that you had . . . well, why don't you tell us how many full-time. A. We have two full-time hostess-cashiers. And then we have two part-time hostess-cashiers.

Q. Now, what hours do the hostess-cashiers work? A. They work from 7:00 in the morning until 3:00 in the afternoon and from 5:00 in the evening until closing of the

K. King, for Employer, Direct.

dining room which might be 11:00, it may be 12:00 depending on the business.

Q. When does the part-time hostess-cashier become necessary? A. Part-time hostess-cashier becomes necessary in the summer business where it's necessary to have two people to service the guests coming into the dining room.

Q. And how many people would you have on a part-time capacity? A. Two, sometimes three.

Q. So what are we saying, that we have four or five? A. Depending on the season, right, and the availability of the part-time people.

Q. Okay. Would you describe Mrs. Nichols' employment with the Holiday Inn, when she first became employed and so on? [23] A. Mrs. Nichols was employed first with us when we opened as a waitress. Later on she had an accident and her doctor advised her not to return as a waitress because of carrying the heavy trays and so forth. We offered her a position as a hostess-cashier. And she performed that function.

Q. Is she with your employment any longer? A. No, she's not in our employment at present.

Q. What were the circumstances? Did she quit or what? A. She decided to leave our employment to seek another job. At the time that she left, I tried to get her to stay with us. I suggested maybe putting her in the front desk role and she decided it would be best if she left our employment.

Q. When did she leave? A. Shortly after I came back, the middle of June. I don't have the exact date.

Q. Would you describe the hostess' responsibility on a day-to-day basis, her involvement with the waitresses in particular? A. The hostess-cashier's responsibilities are to make out the station chart of the number of waitresses that we have, to assign the waitresses to their stations, to get the guest when

K. King, for Employer, Direct.

they arrive [24] and to sit them down, provide them with a menu and sometimes supply them with water and make sure that the people in the dining room are being taken care of properly.

Q. How is it established, the identity of the waitresses who are given work a given day? How does the innkeeper or anybody know, for example, who's working that particular day as a waitress? A. First of all we have to determine the availability of waitresses and this we do by consulting the hostess-cashier who works directly with the waitresses. She knows the waitresses preferences, knows any school commitments they may have, any days off they wish to have because we deal basically, with a lot of part-time and married people, too. If possible, we may want to give a waitress a day off that her husband has also. This is not always possible but we try.

Q. Do the waitresses cooperate with each other in setting times and covering for each other and so on? A. Yes, they do, happens many times.

Q. If a waitress would like a day off or is unable to report for personal reasons, what would she likely do to cover her job? A. She may mention it to the hostess-cashier. She may ask another waitress and advise the hostess- [25] cashier that she's gotten a replacement for her in which turn the hostess-cashier would tell me or one of the assistant innkeepers.

Q. Do the hostess . . . so long as the waitress covers her job, again, we're supposing she has an inability to attend by reason of some personal matter, if the waitress covers her job from existing personnel, from existing waitresses, is that the end of the matter or does the hostess have some say in vetoing the selection of the waitress? A. No, basically she would just swap with another girl and it would be covered. But the hostess-cashier would report to me or the assistant innkeeper what happened. And if, for some reason, we didn't feel it was right, I would change the position at that time.

K. King, for Employer, Direct.

Q. And how are the vacations . . . A. I would approve all vacation schedules.

Q. What would the waitresses do, give that data of the requested week? A. I would request the data from one or both of the hostess-cashiers, the morning or evening one as well as the front desk employees and the housekeeping department and since we operate at 100% in the months of June, July and August, it's unlikely that most of [26] us can have vacations at this time. So we try to schedule them in the off-season, as we call it, where we don't have the pressure of the business and where we can more amply take care of the requests of employees.

Q. Who makes the final decision on vacations? A. I do.

Q. What occurs in the event that an employee is not able to come, a waitress is not able to come to work and is unable to find a replacement? What occurs next? A. Well, it depends on, number one, when she would know that she would not be able to come into work. She may tell me. She may tell the assistant innkeeper. She may tell the hostess. She may call up if she was scheduled to be at work at 7:00 o'clock in the morning and call up and say, "I cannot come in." If this situation arose, the hostess-cashier on duty would look at the schedule, and see what employee was off, and call someone into work.

Q. What would she consult to learn who she should telephone? A. Well, the hostess-cashier is aware of the scheduling in the kitchen and where it's posted and she needs this to make her station positions out and [27] make out the checks.

Q. If any waitress didn't come in, would the hostess have any authority to discipline or punish her? A. No, she would not.

Q. What's the compensation of the hostess-cashier? A. She's paid \$1.77 an hour.

K. King, for Employer, Direct.

Q. \$1.77? A. Correct.

Q. And the compensation of the waitresses? A. \$1.22 an hour plus meals and tips.

Q. Are all the hostess-cashiers paid the same? A. Yes, they are.

Q. Do they ever receive tips on occasion? A. Very rarely.

Q. Would you describe in general terms the hiring of waitresses, how that works? A. The hiring of waitresses is done in several ways. We ask the employees that are working in this department if they know of anybody and on many occasions they've been able to recommend and been able to refer us to people who have had experience in the locality. We have run ads in the newspapers. General people just walking through the door may go right by the front desk and into the dining room and say to the gal behind the desk, "Would you have any [28] openings as a waitress?" This is particularly true of summer help.

Q. Now, we've got the candidate, let's say, for employment. How many different sorts of people might talk with that candidate? A. Have any different sorts of people?

Q. Just list them. Obviously you, but others involved in the process. A. Might be the front desk clerk.

Q. All right. Now what would he do? A. He would give her an application. She would go over the desk in the lobby she would fill out the application and at that time he or she on the front desk would say, "We have an applicant for a waitress position."

Q. And whom would that be reported to? To you? A. To me, if I was available. If I was not available, it may go to the assistant innkeeper.

Q. And in his absence? A. In his absence, it may go to the hostess-cashier on duty.

Q. Now, would that be any hostess-cashier that happens to be there? A. That's correct.

K. King, for Employer, Direct.

Q. Now, why would he consult, just to see if there [29] was an opening? A. Right. And maybe the hostess-cashier would have first line knowledge as to the people, when they were going to be leaving and so forth, like this.

Q. Okay. So you're involved, the assistant innkeeper is involved and the desk clerk? A. Right.

Q. And who else might be involved in collecting this kind of information? A. The hostess-cashier, maybe even a waitress.

Q. And waitresses? A. Right. They've gathered this material.

Q. Well, let's see now. We have collected the data and application has been made. What occurs next? What . . . how is the judgment made that he or she should be hired? A. Then I review the application and discuss it with the people that have talked to the employees, find out their impression of who the person was. If they were referred by another employee, I would check with them to see what their indication was and then I would give the employee a call and hire them. This is my standard policy on doing things. There may be a need where we need an employee in a hurry.

Q. Is it your practice to speak to every employee [30] you consider hiring? A. Yes, that's correct.

Q. Have you hired anyone or directed anyone to hire someone without talking to them? A. Yes, I have.

Q. And when you did that did you rely on a recommendation or was it the pressure of events or how did that come about? A. I relied on the event at the time, the need for manpower, for labor, the need for fulfilling a position in a hurry. I may have talked with the employee briefly in front of the cashier's station. I might have talked to him briefly on the phone. I might have talked to them five minutes after they reported for duty.

K. King, for Employer, Direct.

Q. I mean as to any hostess-cashier and if Mrs. Nichols is different, please indicate, can any hostess-cashier on her own initiative fire an employee? A. No.

Q. Can any hostess-cashier on her own initiative hire an employee? A. No, they cannot.

Q. Can they discipline an employee? A. Only in the best interests as far as . . . by that I mean any hostess-cashier is responsible for the [31] run of the dining room, to be sure the customer gets service. If, for instance, a waitress in a particular station has trouble with that station by either demand or extra drinks or wine service or birthday cake and she sees this employee getting bogged down, then she has the right to take a table away from her and give it to someone else who isn't busy.

Q. May she herself help the waitress? A. Yes and she has many times.

Q. What would she do to help her? A. To help her she would pour coffee, get an after dinner order, help with the room service order, anything of this nature.

Q. And any hostess-cashier is expected to do this? A. That's right. She may clear a table and reset a table.

Q. We mentioned the compensation to the hostess-cashiers. Do they receive the same insurance benefits that you and other management people receive? A. No.

Q. Do they receive any kind of insurance? A. The insurance that all the other employees have available to them.

Q. Which is? [32] A. Which is . . .

Q. Major medical? A. Major medical is not included. It's hospitalization where the company pays a portion of it, and, depending on what kind of coverage the employee has, they pay part and there's also \$1,000 life insurance policy.

Q. Let's spend a moment if we can . . . now, treat if you will, the questions of the parties and how those parties

K. King, for Employer, Direct.

operate within their routine, functions, any gathering. A. Functions . . .

Q. Beyond the normal service of meals and so on to customers off the street. A. In the food operation, we have additional business which we call banquet business. A guest would come into the inn and would sit down with either myself or the sales representative and would request a special room for a party, a determined number of people. This may be a year in advance, may be done a month in advance, may be done six months in advance. As we get close to the time of the party which is usually one week before, we have at that time the number of people that are going to attend and the menu has been selected and any other [33] suggestions from the guest as to how he wants the party operated. At this point, the secretary would type out what we would call a function sheet.

Q. You'd instruct her or dictate the thing to her? A. I would either instruct her or the sales representative would write out a draft and give it to the secretary for typing.

Mr. Drenning: Let's get these marked.

(The documents above-referred to, were marked Employer's Exhibits 1, 2, 3 and 4 for identification.)

Mr. Drenning: Mr. Hearing Officer, I might indicate these have no specific value but they are helpful in establishing how the bartenders assign themselves, how the waitresses do that and how the known selection of personnel involved that affect one or two people at issue, so let me go through these briefly.

Q. (By Mr. Drenning) Mr. King, I show you marked for identification, Employer's Exhibits 1 through 4 and ask you if you can identify those? A. Yes, I can.

K. King, for Employer, Direct.

Q. Would you just describe what they are? A. These are function sheets which are made out by the sales representative and the secretary which indicate the banquet traffic business at the inn on a [34] given day, the time as to when the function is going to take place, the number of people, the menu, any special arrangements and setting layouts.

Q. Okay. Well, I think we could go over this quickly. The menu is indicated on the left hand side of the bottom portion of the page, the beverages indicated, special arrangements, setting layout and so on. Now, directing your attention to the left-hand portion of the page where menu is written and the food to be served, I think in all of these there are waitresses names, are there not, on virtually all of them? A. Yes.

Q. How is it determined, and I take it the names indicated are waitresses assigned to that particular day to that particular function . . . A. They're assigned to these functions.

Q. How is that established? A. First of all, the waitresses that are established for the parties, we have to determine the availability of labor for that day. And the one function sheet I have here is December 11th which is during the Christmas season and it's a party for 32.

Q. Indicate which exhibit you're referring to, please. [35] A. Exhibit No. 1. It's probable that at that time we got other functions going on at the time.

Q. Just indicate how you come to select those waitresses. Who do you speak with? Who writes the names in and so on? A. The sales representative and the hostess-cashier together see who could be available for working these parties.

Q. Well, might the selection be in response to a customer demand, for example? A. Right.

Q. Not a demand but for a request? A. Yes. Many times waitresses are requested for parties and also, depending upon what type of party it is, I may want certain people to work a

K. King, for Employer, Direct.

party because of their longevity in the business and the type of menu. If it's a three-item menu, that's more difficult to serve than a one-item menu.

Q. You're involved in customer requests. Does anybody give opinion or advice as to waitress selection? A. The chef or assistant innkeeper, the sales representative, the hostess-cashier.

Q. Now, where does this sheet go relative to the dining room? A. This sheet in the . . . is in the dining room on a [36] clip board where they sign in and out. The chef has one that's posted in the kitchen. The front desk and I have one. The assistant innkeepers have their copies in all areas.

Q. Incidentally, would a waitress ever see this thing posted and ask that she be assigned? A. Right. She may request this.

Q. It's a negotiated process? A. Right.

* * *

[51] Q. Okay. Let's turn now to the housekeeping function. Who's the current housekeeper? A. Mrs. Fitzpatrick.

Q. Did Mrs. Fitzpatrick open with this particular Holiday Inn? A. Yes, she did.

Q. What's involved in opening an Inn from the housekeeping end of it? A. What's involved in opening an Inn? Recruiting employees and taking over from a construction stage a new building, general cleaning, setting up supplies, inventories, inventory the mattresses and bed-spreads and all the furnishings.

Q. And that process would take how long, would you say? A. We were working a couple of weeks before we opened.

Q. And how long was she there after you opened? A. She was there, I believe, six months. I'm not sure of the last date.

Q. And then was she sent to another Inn? A. She was removed from the property. Where she went, I really don't know.

K. King, for Employer, Direct.

Q. Well, there came a time when she left the Holiday Inn?
[52] A. That's right.

Q. And would you describe the operations of the housekeeping function in Mrs. Fitzpatrick's absence? A. Yes, I would. When we opened the Inn, Mrs. Fitzpatrick being an experienced housekeeper, came up to get us started and to set up the housekeeping department. It's my wish and hers that we would find in the chamber maids that we had, someone that could eventually take over this housekeeping. And during Mrs. Fitzpatrick's absence, Mrs. Hancock was given these responsibilities. I worked very, very closely with Mrs. Hancock because of her newness to our business. And, in fact, day-to-day was our relationship.

Q. So we can establish a time frame, this was in late '71, early '72 when Mrs. Fitzpatrick left approximately? A. Right.

Q. And then Mrs. Hancock acted in some of the areas fulfilled by Mrs. Fitzpatrick. Who worked with Mrs. Hancock? A. I worked directly with Mrs. Hancock and the assistant innkeeper, too.

Q. Did she have other women in the housekeeping functions working with her? A. Yes, she did.

[53] Q. Would you describe the circumstances that occasioned Mrs. Fitzpatrick's return? A. Yes. At the time that Mrs. Hancock had taken the responsibility, when Mrs. Fitzpatrick left the property, I was working with her daily and Mrs. Hancock was having trouble with the assistant housekeeper at the time. There was a personality problem which I was very upset about and knew about and so finally I called the office and I said to the office, I said, "Send me a housekeeper. I need somebody to straighten out this department. I don't have time for it."

Q. Well, the personality problem, would you spend time on this? This was Mrs. Hancock . . . A. Problem with the assistant housekeeper.

K. King, for Employer, Direct.

Q. In what way was the situation difficult? A. The two employees, Mrs. Hancock and the assistant housekeeper at the time did not really communicate effectively. They were working against each other rather than working with each other.

Q. Was Mrs. Hancock, do you know, of your own knowledge, actually in contact with Mrs. Fitzpatrick during Mrs. Fitzpatrick's absence? A. Yes, on a weekly basis.

Q. And Mrs. Fitzpatrick returned to the Inn from time-to-time during that absence? [54] A. Returned once in November, I believe it was, and she was aware of the problems at that time. I mentioned it to her.

Q. Going back then, you contacted somebody at Federated? A. Yes.

Q. How did you come . . . or did you ask for Mrs. Fitzpatrick? A. Not directly. I said, "I need some help in this area. Would you send me a housekeeper, somebody who could straighten out this department?"

Q. What occurred next? A. They sent Mrs. Fitzpatrick. It would be the obvious one since she opened the Inn.

Q. And when was that? A. February of '73.

Q. Is Mrs. . . .

Mr. Lipsitz: February of when?

Mr. Drenning: February of '73.

Q. (By Mr. Drenning) And what job did Mrs. Fitzpatrick assume on her return? A. When she returned to the Inn, she assumed the position she had when she opened as the housekeeper.

Q. And Mrs. Hancock was engaged in what activity? A. Mrs. Hancock automatically would be assistant to [55] Mrs. Fitzpatrick and help her as she did when we opened.

Q. And what became of the woman with whom Mrs. Hancock had these difficulties, the woman that was assigned as

K. King, for Employer, Direct.

Assistant . . . or what did you say, assistant housekeeper? A. Yes. I talked to Mrs. Hancock and this woman prior to Mrs. Fitzpatrick's arrival.

Q. Were you seated together and how did that conversation come up? A. Which conversation?

Q. This conversation with Hancock? A. And the assistant housekeeper?

Q. Yes. A. That came up in my office when I discussed the situation with her. And I asked the assistant housekeeper, "We have to have some harmony together to operate and this is the third time we've spoken to you about this and what can we do?" I said, "I have to have two people." And I said, "You obviously cannot function working with Mrs. Hancock." I said, "I have no alternative but to put you back on the payroll as a maid." And she decided to leave our employment?

Q. At that time she was acting . . . A. As an assistant housekeeper.

[56] Q. When you indicated to her that you intended to put her back to work as a maid, did you know that Mrs. Fitzpatrick was coming or on route? A. I didn't know that she was coming. I knew that someone was going to be coming.

Q. You were advised by Federated that someone was going to . . . A. I called them to tell them I needed some help in this area.

Q. Well, who now, since February, '73, has authority to hire and fire in the housekeeping department? A. Mrs. Fitzpatrick has the priority of hiring.

Q. And firing? A. In some cases she has but all cases she speaks to me.

Q. Might she effectively recommend the termination of an employee? A. Yes.

Q. Mrs. Hancock, does she have any prerogative with respect to hiring? A. No.

Q. Firing? A. No, she does not.

K. King, for Employer, Direct.

Mr. Drenning: I think, Mr. Hearing Officer, this scheduling involvement of the housekeeper might [57] better come from Mrs. Fitzpatrick and I'll call her to testify as to that. I just wanted to make that remark because I've dealt with the others in more detail than I have in schedule functioning.

Q. (By Mr. Drenning) Mr. King, I think this has been involved in your testimony, but with respect to meetings with various employees, would you describe how you communicated to employees special requirements of parties that would be indicated on function sheets or whatever else might cause you to speak with employees? A. I would speak to employees individually, collectively, maybe the chef and hostess-cashier on duty and myself and assistant innkeeper might sit down and have a cup of coffee. Maybe Mrs. Fitzpatrick and the maintenance man, Mrs. Hancock, we might sit down and go over details. Might be in my office. Might be in the hallway.

Q. Well, for example, I think you indicated that the ski season causes you to increase in business. Let's say in advance of the ski season, who would you talk with and what would you talk about? A. In advance of the ski season, I generally have a meeting with different people in these areas to alert them. This is a convenient situation of time.

Q. Would you do this on a daily basis or as you [58] anticipate the coming ski season? A. This would not be on a daily basis. It would be as we approach the heart of the ski season or a convention period or a heavy party season, any special . . .

Q. Very quickly, how about the kitchen, what would you alert the kitchen to? A. Alert the kitchen to travellers, skiers that might need an early breakfast. Might be running a buffet breakfast.

K. King, for Employer, Cross.

Q. Who would you speak to? A. The chef.

Q. Anybody else? A. No.

Q. In the dining room, who would you speak to there? A. The assistant innkeeper, the sales representative, the hostess-cashier. That would be about it.

Q. So collectively, a judgment would be made as to number of personnel in the dining room if they're adequate for the skier breakfast? A. Yes.

Q. The number of rooms? A. The number of rooms, we would alert the housekeeper as to the number of rooms that we would have. Maybe they all wanted to be in one section. If it was a [59] wedding group or team travelling through, currently we have the Buffalo Braves, they have special room requests. We don't have any long beds for them but . . .

Q. Is this representative of the advice given depending upon seasonal or other considerations or is it handled differently? Is this representative of how these fluctuations are handled? A. Correct.

* * *

[60] CROSS EXAMINATION:

[61] Q. (By Mr. Lipsitz) You became ill or incapacitated from work on February 17th, 1973? A. Correct.

Q. And you returned June 1st, 1973? A. June what?

Q. June 1st, 1973? A. It was the first week in June. I don't recall the exact date.

Q. In your absence or what period of time did someone take your position? A. For two weeks the assistant innkeeper, Mr. Perrigo.

Q. That was the first two weeks? A. Right.

Q. And then the balance of the time? A. The balance of the time, Mr. James Chieffo.

Q. Where was he employed prior to the time? A. Em-

K. King, for Employer, Cross.

ployed as Innkeeper, Holiday Inn of Stroudsburg, Pennsylvania.

Q. One of the Federated Inns? A. Correct.

Q. Where is he now? A. In Stroudsburg.

Q. Did he return there after your resumption of your duties? [62] A. Yes, he did.

Q. Is he still employed by Federated? A. Yes, he is.

Q. He's not here today, is he? A. Yes, he is.

Q. Oh, all right. As of February 17th, where was Mrs. Kirkpatrick? A. I don't know where Mrs. Fitzpatrick was.

Q. I'm sorry, Fitzpatrick. A. I don't know where she was.

Q. She had left? A. Yes.

Q. She left when? A. She left approximately six months after we opened. I don't know the exact date.

Q. Well, was it late 1973? A. '72, I believe.

Q. You opened then in '71 sometime? A. Right, July of '71.

Q. And after about six months, she was assigned to another . . . well, she left? A. She left.

Q. When you say she left, at whose direction? A. The home office.

Q. The home office. So she didn't leave the employment of Federated, she was reassigned by [63] Federated to some other location? A. Correct.

Q. You're not presently aware of what that other location was? A. No.

Q. But you do know she remained in the employ . . . withdraw that. You believed and had knowledge that supported your belief that she remained in the employ of Federated? A. Correct.

Q. So you worked with her and she worked with you for the first approximately, six months of the opening of the Dunkirk unit? A. Correct.

K. King, for Employer, Cross.

Q. Now, during that six-month period, did she hire the staff for the housekeeping function? A. Actually, it was a team effort. Mrs. Fitzpatrick, myself and Mr. Green . . .

Q. Who's he? A. Mr. Green was from the home office, from Federated. And Mr. Duglaris.

Q. Who's that? A. Mr. Duglaris.

Q. Who's he? A. He's the Senior Vice-President of Operations.

[64] Q. Also from the home office? A. Right. We interviewed at the employment office in Dunkirk before we opened over a thousand applicants.

Q. And what was the process that was used to reduce those to . . . now, I'm confining myself to the housekeeping department . . . those that were to be hired for the housekeeping department? A. Right. We went through the applicants for this area. Previous to us appearing in the employment office, we ran an ad in the local newspaper stating that we would be looking for employees for the Holiday Inn of Dunkirk-Fredonia. We went through the employee applications and talked to these people. Some have had experience, small motels. Some had done cleaning in private homes. Some had worked in the grape vineyards and these employees we felt would be good candidates for chamber maids at the Holiday Inn. We got around 25 or 30 or 50 of those applicants.

Q. For chamber maids? A. Right. These were original applications.

Q. And then the four of you reduced them to the number that you needed? A. Reduced them to the number we needed.

Q. Which was approximately how many? A. Approximately 18.

[65] Q. Now, 18 would . . . A. Right.

Q. 18 would be the persons who would be employed as . . . A. As of July . . .

K. King, for Employer, Cross.

Q. The opening? A. The opening.

Q. And after they cleaned up from the contractor, then their function was to clean the rooms, keep them in supplies?

A. Correct.

Q. According to some routine or schedule that Federated develops for your... A. No, the Holiday Inns of America has certain rules and regulations.

Q. So on some pre-arranged plans and schedules? A. Right.

Q. And that included some men who were porters or whatever they call them that lug linen around? A. Housemen.

Q. And also cleaned up around the grounds? A. Yes.

Q. That included an assistant housekeeper? A. No. There was no assistant housekeeper at that time.

[66] Q. So it did not include any person like that? A. Right.

Q. Did there come a time during the six-month period that an assistant housekeeper was hired? A. During that six-month period, Mrs. Fitzpatrick was endeavoring to find a maid who had very, very good rooms and good qualities and could eventually take over the housekeeping role at the Inn and she found this in the person of Mrs. Hancock.

Q. How was Mrs. Hancock employed at the time? A. She was employed as a maid, right.

Q. And when did she discover or arrive at a decision that Mrs. Hancock was the person she was looking for? A. About a month before she left the property.

Q. Did she communicate this information to you? A. Yes, she did.

Q. What did she tell you? A. She said, "I've been working with Mrs. Hancock and of all the girls we have, I think that she can catch on real well. Her rooms are very, very clean. She has no problem with the supplies and she understands

K. King, for Employer, Cross.

what we are trying to do here. Also, Mrs. Hancock had had some experience in the laundry, too."

[67] Q. Did she and you then decide to make her the assistant? A. We decided to make her the assistant house-keeper.

Q. Was she that for the month at the end of the six-month period of Fitzpatrick's... A. Yes, she acted as an assistant for about that month.

Q. What changes, if any, took place in her job responsibility at that time? A. Not a great deal. She would go with Mrs. Fitzpatrick on the baggage report and the checking of the rooms.

Q. What's "baggage report"? A. The baggage report is determining the number of occupants... the number of occupied rooms, the number of rooms that are checked out and it's internal information to report the status of the rooms to the front desk.

Q. Is this a daily function? A. Yes.

Q. More than daily? A. It's two or three times a day.

Q. You're not just satisfied to know in the morning, you have to know it throughout the day? A. Two or three times a day. In fact, the maids [68] themselves called the front desk and gave the status.

Q. Is this a form that's completed? A. Yes, it is.

Q. And you say she started going around and doing this baggage report with Mrs. Fitzpatrick? A. Correct.

Q. What else? A. She would be doing inspections with Mrs. Fitzpatrick, checking on the cleanliness of the rooms, the Holiday Inn requirements that must be part of every guest room.

Q. You're talking about such things as the number of towels and toilet tissue and soap and all the supplies? A. Fly swatters, several of them.

K. King, for Employer, Cross.

Q. What else did she do? A. Basically, that's about it.

Q. Did she continue to make beds? A. Yes.

Q. Did Mrs. Fitzpatrick make beds? A. No, she did not

Q. How much time did Mrs. Hancock, as an assistant, continue to make beds as compared with the time before she was assistant? A. Will you restate the question?

[69] Q. Withdraw the question. During this last month of Fitzpatrick's first six months, did the amount of time that Hancock made up rooms, made up beds, made up rooms, become reduced? A. To some degree.

Q. Well, to what degree? A. I would say about half, anyway.

Q. Was there a change in her income status? A. No, there was not.

Q. She continued to be paid the same? A. Yes, she did.

Q. And that meant she was paid the same as the other room maids? A. Correct.

Q. During this six-month period, was she always paid the same as the other room maids? A. Would you rephrase that again?

Q. During this six-month period, I'm talking about the six months that Fitzpatrick was there until she left for another assignment ... A. Right.

Q. ... was Hancock always paid at the same rate as the other room maids? A. She was hired as a maid and she was paid the maid wages.

[70] Q. The answer to my question is she was paid at the same rate as the other maids? A. Right.

Q. There's no low, medium, high rate for maids? A. No. There's one standard price for maids.

Q. You mentioned, I think, a housekeeping report. Is that different from a baggage report or is it the same thing? A. A housekeeping report is involved with the baggage report

K. King, for Employer, Cross.

stating the availability of rooms. Let me take you through the situation in the morning, then. The housekeeper would pick up the report from the front desk which would tell them the number of rooms that were occupied, those that were going to be baggage or intended to stay over and those that were checked out that the maids could get in the sections right away. The housekeeper, in turn, would make a morning report of these rooms to determine additional check outs that could be done and maybe determine additional baggage rooms if a guest decided to stay over. She would report this to the front desk on the form. The maid, however, would also report the rooms that were cleaned and vacant.

Q. And she reported that to whom? A. To the front desk clerk.

[71] Q. All right. Now, when Fitzpatrick left which was early in 1972, there was a period of one year, was there not, during which time the housekeeper became ... withdraw that. After Fitzpatrick left, did Hancock become the housekeeper? A. She became the acting housekeeper, yes.

Q. All right. And was there a change in her income status at that time? A. Yes, there was.

Q. What was the change? A. She was salaried at that point.

Q. And what was her salary? A. \$80 a week.

Q. For how many hours? A. 40 or 42 hours a week.

Q. And what were the maids paid? A. Maids were paid \$1.85 an hour.

Q. For how many hours? A. They generally worked between 30 and 40 hours a week.

Q. How long did she remain acting housekeeper? A. She remained acting housekeeper until I advised Federated that we were having problems and that I needed an experienced housekeeper sent to Dunkirk.

K. King, for Employer, Cross.

Q. When was that? [72] A. That was after . . . at the time we were having . . . about a couple months before Mrs. Fitzpatrick came in February, I had mentioned to the home office that we were having troubles with Mrs. Hancock and the assistant housekeeper.

Q. Well, you had your illness on February 17th. When did Mrs. Fitzpatrick return . . . A. No, no.

Q. Just before your illness . . . A. My illness was in March, March 17th.

Q. Oh, you testified, I believe, February, but that's not either here nor there. A. It was St. Patrick's Day.

Q. It was in March? A. March 17th.

Q. When did Mrs. Fitzpatrick return? A. She returned in February.

Q. So for a year and several . . . and a month or two, Mrs. Hancock was in the position of acting housekeeper? A. Right.

Q. Did her salary remain the same all the time? A. Right.

Q. What was the communication, if any, to the employees, stating Mrs. Hancock's position? A. There was no need to state anything to the [73] employees as to Mrs. Hancock's position.

Q. Mr. King, I didn't ask you if there was a need or not, I asked you if there was a communication of any kind? A. No, there was none at all.

Q. There was no verbal communication? A. There was verbal communication.

Q. Well, I believe that I was asking was there a written communication, I gather, and there was no written communication? A. No, there was not.

Q. Nothing posted anywhere stating that, "Ruth Alice Hancock is now acting housekeeper"? A. No, there was not.

Q. No where mentioned in any company records that she was housekeeper or acting housekeeper? A. Are you referring to the point when Mrs. Fitzpatrick was there or was not there?

K. King, for Employer, Cross.

Q. At the time she became acting housekeeper. A. Yes, there was indication that she was acting housekeeper on payroll records.

Q. Which were not conveyed to the employees? A. Right.

Q. But there was no posting for the employees of any sign or notice? [74] A. The employees verbally knew.

Q. How did they learn that? A. Through Mrs. Fitzpatrick.

Q. You're telling me then that Mrs. Fitzpatrick told the other housekeeping employees that, "When I leave, Mrs. Hancock is going to be . . ." A. "The acting housekeeper."

Q. Or since you weren't there, she may have said, "Housekeeper" is that correct? A. Correct.

Q. What you know is what Mrs. Fitzpatrick told you she informed the employees? A. Well, I was also involved in a meeting before.

Q. Yes, sure, but you don't know because you weren't there whenever what Mrs. Fitzpatrick told you she told them.

A. Right.

Q. You were involved in the decision about making Hancock acting housekeeper. A. Correct.

Q. And I assume you're also involved in discussions about conveying this information in some form to the other housekeeping department employees so that they know about it. A. Correct.

[75] Q. All right. Now, in what manner was Hancock's performance of her duties different from that in the performance of the duties of Fitzpatrick during this period of early 1972 until sometime in February, 1973? A. Well, then being new as acting housekeeper, I spent more time with Mrs. Hancock than I would have with Mrs. Fitzpatrick.

Q. Let's talk about that. How much time did you spend each day with Mrs. Hancock and for how long a period did that last? A. I spent a great deal of time right after Mrs. Fitzpatrick left.

K. King, for Employer, Cross.

Q. You tell me what you mean by "a great deal of time", not by the use of the word "great" but in terms of minutes or hours. A. I would say, in a total day, about an hour and 15 minutes, roughly.

Q. And did that continue through the period of early 1971 through February ... excuse me ... early '72 through February, '73? A. There were days that I had to spend more time and less time through this period depending on the nature of the business. But whether we had special room commitments or whether we had weddings or [76] conventions and so forth ...

Q. All right. Were there days that went by and you didn't have to spend time with her in performance of the housekeeping duties of which she was then acting housekeeper? A. There were days I spent less than an hour and 15 minutes, yes.

Q. Were there days which you didn't spend any more time except to say, "Hello, how are things going?" A. I would spend more time than that.

Q. What was the minimum time that you spent during this one-year period? A. I'm around the property all day, sir. It's hard to come up and say the minimum number of ...

Q. By the same token, you talk with all sorts of people all day long including your assistant manager, including the chef, including the bartenders, including the hostess-cashiers, including the mayor, anybody that was around, you were talking to? A. Right.

Q. And we know you didn't keep a schedule of how many minutes a day you talked to anybody. A. Right.

Q. But nevertheless, you're testifying you spent as much as an hour and 15 minutes a day with her and [77] I want to know from your same powers of recollection as little as how much time a day you spent with her. A. I don't think I can answer that question.

K. King, for Employer, Cross.

Q. All right. Which means that it may have been very minimal but you can't be certain as to how much it may have been. A. Correct.

Q. Now, in addition to your spending this hour and 15 minutes down to the time that you can't estimate with her on this daily basis, were there times when she was employed when you were off the premises? Before you became ill I'm talking about, this year and a month or two. A. Yes, there was.

Q. So on those occasions, no consultation with her? A. Right.

Q. What were those occasions? A. Those were occasions where I had meetings in the State College to go to.

Q. How long were you away for any of those meetings? A. Two days.

Q. And what other . . . did you take a vacation? A. No, I didn't take any vacation.

Q. Did you live off the premises? A. No, I did not.
[78] Q. Were you there seven days a week? A. No, Sundays I generally tried to take off.

Q. And was Mrs. Hancock working on Sundays? A. Yes.
Q. So that Sundays would go by when you didn't see her? A. Although during the opening and so forth after Mrs. Fitzpatrick left, there was occasion that I would be in there more Sundays than not because of the ski business.

Q. During the year and two month period that I'm describing, were there many Sundays that you were not there? A. Several Sundays, yes.

Q. She would be there without you then? A. Yes.

Q. In addition to spending time with her, when you spent time with her, what did you talk to her about? A. Talked about the linen, the quality of the linen, the supplies, amount of labor, does she have enough help, did everybody report for duty on time, does she have any problems this way.

K. King, for Employer, Cross.

Q. Mr. King, you didn't discuss the same thing every day with her for an hour and 15 minutes, did you? [79] A. No. She might have a problem with the vacuum cleaner and she may say, "This vacuum cleaner won't work. We've got to get it fixed."

Q. She needed your authority to get it fixed? A. No, but she came to me with many of these little things that she wanted help with and I was only too willing to give her the advice.

Q. Were any maids or housekeeper personnel hired during this period of time? A. I guess there were people that were hired.

Q. Did she interview them? A. She interviewed the employees.

Q. Did she recommend hiring or not? A. She recommended them to me, yes.

Q. Did you normally accept her recommendations? A. In most cases, yes.

Q. Do you recall if any were rejected? A. Not specifically, no.

Q. Now, in addition to spending this time with her that you've already mentioned when she came to you with problems and you told her and talked to her about various standards, I take it, and requirements of the job ... A. Right.

Q. ... what other differences were there in the way [80] that her job was performed from the way Fitzpatrick performed it? I'm not talking of quality or level of performance. I want to know in terms of job function and job content. A. Mrs. Hancock needed more reassurances ...

Q. I'm saying other than that. A. Other than that, the routine duties are basically the same.

Q. And the supervision and direction of housekeeping force was the same? A. Correct.

Q. And she was, of course, responsible for that, wasn't she? A. She was responsible to me for that.

K. King, for Employer, Cross.

Q. Mrs. Fitzpatrick was responsible to you for that, too?
A. Right.

Q. Now, during that period of time and I'm talking about this year and one or two months. Because you can't be more precise, it was early '71 through February of '72, correct? A. Correct.

Q. '72 through '73, I mean. A. Right.

Q. It's a year and one or two months? [81] A. Right.

Q. Who made up the schedule of hours of employment of the housekeeping department? A. Mrs. Hancock and myself.

Q. Well, did she do it and then submit it to you? A. Yes, but she would ask my advice on employees.

Q. Everytime she wrote up a schedule? A. Not everytime, no.

Q. Were the schedules made up weekly? A. Yes.

Q. Do the shifts change? A. Generally not.

Q. You mean the same employee is usually assigned to the same shift? A. The only way it could be changed would be on occupancy. Occupancy would dictate the number of maids we would have.

Q. But, generally, maids worked the same shift week in and week out? A. Yes, but we had to rotate the weekends.

Q. So she had to makeup rotating on the weekends? A. Right.

Q. Which she showed you or consulted with you about? A. Right. If she had problems in having help [82] available, she would let me know.

Q. Were any vacations during this year and two month period made available to housekeeping personnel? A. I believe there were some and they were taken care of by me. I approved them and ...

Q. How did they come to your attention in the first place? A. Because I asked her to find out who would like to take a vacation, those that have been in our employment over a year.

K. King, for Employer, Cross.

Q. And she got the information from the employees? A. Right.

Q. And who scheduled the vacations after it was approved for taking them? A. I scheduled the employees with the housekeeping.

Q. You mean she worked with you in scheduling? A. Right, right.

Q. In the housekeeping department, maids do not just willy-nilly decide which room they're going to handle or which section of the Inn? A. No, they don't.

Q. Who makes that initial decision? A. Mrs. Hancock or Mrs. Fitzpatrick.

Q. Are there preferable and non-preferable portions of the Inn from the point of view of an [83] employee in the housekeeping department?

In other words, is there some place where it's nicer to be a maid or work in the housekeeping than other places not as nice? A. I would say not.

Q. I'm not arguing with you. A. The rooms are basically the same.

Q. Well, there may be places where truck drivers come in and, you know, and aren't as pleasant as some banker ... from my point of view, from the point of view from other people. There's no such consideration like that? A. No.

Q. And, of course, the daily reports that had to be made were made by her during this year and two month period? A. Yes, there were.

Q. Now, did Mrs. Hancock come to you and complain about any housekeeping department personnel or the performance of their duties during this period of time? A. Yes.

Q. On one or more than one? A. On more than one.

Q. Did she make any recommendations on any of those occasions as to what should be done with such a person? [84] A. No, she did not.

K. King, for Employer, Cross.

Q. Just give the uniform? A. She gave the uniform.

Q. Did she tell you whether or not ... do you know whether or not she ever spoke to any housekeeping department personnel about shortcomings in their performance of duties? A. I guess she did speak to them about this.

Q. And told you she had spoken to them about it? A. Yes, she had.

Q. Now, during that year and two month period, there came a time, according to what I recall of your testimony, that Mrs. Hancock herself was trying to find an assistant housekeeper. A. Correct.

Q. At whose direction was this? A. At whose direction was that?

Q. She was trying to find somebody? A. Well, Mrs. Hancock can't work seven days a week. She has to have some time off. We have to provide an employee that will provide her day off.

Q. And was that what she was looking for in the nature of an assistant housekeeper? A. Actually, this was being done when Mrs. Fitzpatrick was here.

[85] Q. And what was being done? A. Trying to find a maid that would be able to take Ruth's day off.

Q. And she found Mrs. Hancock? A. Right.

Q. And that was the process that was being repeated by Mrs. Hancock? A. Right.

Q. When I asked you at whose direction, was it at yours or did she know she had to find somebody? A. It would be at my direction and talking to Mrs. Fitzpatrick.

Q. All right. And there came a time when she had what, selected somebody? A. There came a time she had selected somebody.

Q. Told you about it? A. Yes.

Q. Who was that person? A. Dorothy Belack. Actually, it was more than one.

K. King, for Employer, Cross.

Q. You made. . .you mean she made different recommendations? A. No, there were more. . .when Mrs. Fitzpatrick was away from the property. . .

Q. I'm talking about this year and two month period. [86] A. That Mrs. Fitzpatrick was away from the property. . .

Q. Go ahead. A. There were more than one assistant housekeeper that helped Mrs. Hancock for her day off.

Q. Who designated them as assistant housekeeper? A. We were grooming them at the time Mrs. Fitzpatrick was here.

Q. Well, who, in the management of this Holiday Inn, told Dorothy Belack or anybody else that she was going to be an assistant housekeeper? A. Myself.

Q. Mrs. Hancock had nothing to do with it? A. Yes, she did.

Q. What did she have to do with it? A. She thought also from observing her position as a maid, she would make a good housekeeper.

Q. Who first thought that, you or Mrs. Hancock? A. I thought that, Mrs. Fitzpatrick thought that.

Q. Did you go around and watch Mrs. Belack make up rooms? A. No.

Q. So somebody told you about that? A. Mrs. Hancock and Mrs. Fitzpatrick.

Q. So whether it was Fitzpatrick first or Hancock first, the information about Dorothy Belack and anybody [87] else who subsequently acted as assistant housekeeper came from somebody in responsibility over those maids, isn't that correct? A. Correct.

Q. That is, as busy as you are, you don't have time to go around and watch people make up rooms. A. Right.

Q. Who's the one she had the problems with not getting along with that caused you to call the home office and ask for someone to straighten it out? A. That was Dorothy Belack.

K. King, for Employer, Cross.

Q. And when did that happen or about? A. About three months prior to Mrs. Fitzpatrick's return.

Q. That would place it in late November or December? A. November. Actually, even in October. Because it was in October that we were having problems, and, as a matter of fact, Mrs. Fitzpatrick made a visit to the Inn in November, I believe, and Mrs. Fitzpatrick was aware of the problem then and had talked to Ruth about it and talked to me about it.

Q. And what was the nature of the problem? A. The problem was that there seemed to be a personality difference between Mrs. Hancock and Mrs. Belack that one was not communicating specifically [88] with the other. The department was completely upset and it was . . .

Q. Well, can you be more specific in what area they weren't communicating? What wasn't being done, for example? A. The object of Mrs. Belack's job when Mrs. Hancock was not there or any assistant housekeeper is to continue to do the job on a daily basis so that the housekeeper can have a day off. She's to follow the same procedures and the same policies that we normally do. However, Mrs. Belack was constantly trying to innovate things on her own and trying to not follow the pattern and in some cases undermining Mrs. Hancock saying, "Well, we'll do it this way different today because Mrs. Hancock isn't here."

Q. And that was a summary description of the nature of the problem? A. Yes. There was a personality difference.

Q. Well, was Mrs. Belack ever let go? A. No. Mrs. Belack quit of her own volition.

Q. When was that? A. This was in January, I believe. I don't have the exact date.

Q. That's when Fitzpatrick came back and you offered Belack the opportunity to remain on as a maid [89] and she quit? A. Right.

K. King, for Employer, Cross.

Q. That's Hancock? A. Right.

Q. Now when Hancock returned, which you testified on your date, was in February, 1973. A. Right.

Q. . . . Hancock reverted to being assistant? A. Correct.

Q. Now, was there any change in Hancock's salary status?

A. No.

Q. By the way, is Hancock still employed? A. Yes.

Q. As of the date of the election, what did she make? A. \$80 a week.

Q. Same thing she was making when she was acting house-keeper? A. Correct.

Q. What changes in her duties took place after she reverted to the position of assistant housekeeper in February, 1973? A. Change in her duties would be that Mrs. Fitzpatrick would be working more directly with the scheduling and [90] Mrs. Hancock would be taking care of supplies and doing some rooms and also doing some inspecting. Maybe Mrs. Hancock would take the second floor and Mrs. Fitzpatrick would take the first floor or they might switch. She would be assisting Mrs. Fitzpatrick in the total housekeeping function.

Q. Did Mrs. Hancock go back to making up rooms? A. Yes, she has on many occasions.

Q. As a regular part of her job? A. Not as a regular day-to-day part of her job, no.

Q. Before in the first six-month period before Fitzpatrick left, that was a regular portion of her job, as it not? A. Yes, it was.

Q. And when she does it now, it's to fill in? A. If we have a shortage of maids. She would be inspecting on the second floor, if the soap was forgotten or towels forgotten or any literature that's required in the room would be forgotten, she would most likely put it in herself.

Q. Fitzpatrick would do that herself, too, wouldn't she?

K. King, for Employer, Cross.

A. Yes. I would think Mrs. Hancock would be more likely to do it herself where Mrs. Fitzpatrick would [91] get the maid to do it.

Q. What communication was made to the employees in February, 1973, about the change in status of Mrs. Hanc

A. There was no mention to the employees. It was a re^l the employees would understand that Mrs. Fitzp^{at} was . . .

Q. That's your impression. I asked you if there was any communication to the employees about it. A. No, there was not.

Q. Housekeeping department employees have never been instructed not to take any instructions from Mrs. Hancock after Fitzpatrick returned, had they? A. Would you restate the question, please?

Mr. Lipsitz: Would you read the question.

(The pending question was read back by the Reporter.)

The Witness: They have not been instructed not to take any instructions, no. But they would like Mrs. Fitzpatrick . . .

Q. (By Mr. Lipsitz) The question is have you issued instructions not to take instructions and the answer is no? A. Right.

Q. From February, 1973, to the time of the election, [92] did you know the schedule for Hancock or did it change periodically? A. Did I know the schedule?

Q. Yes. I mean do you have knowledge in your possession of her schedule from February, 1973, to the time of . . . A. Yes.

Q. What was it? A. She would be basically working five days a week and she would be assisting Mrs. Fitzpatrick in a housekeeping function.

K. King, for Employer, Cross.

Q. I didn't ask you about the assistants. I want to know about the schedule? A. She worked five days a week.

Q. Which five days or did it change? A. She sometimes changed. She has no set day off.

Q. Between them they covered the seven days? A. Between them did they cover the seven days?

Q. Yes. A. Yes.

Q. So either Fitzpatrick or Hancock was scheduled to be at the premises in the housekeeping function on one of the seven days during the week? A. Right.

[93] Q. Did Fitzpatrick, during this period of February of '73 to the time of the election, have basically worked five days a week also? A. No, she worked six and sometimes seven.

Q. If she didn't work the seventh, Hancock was there? A. Right.

Q. What hours did she work, overlapping hours, the same hours, midnight to 8:00? A. 8:30 to 5:00.

Q. So that one of them was not on duty say, you know, from midnight to 8:00 in the morning? A. No, there's no call for that.

Q. In your industry people were usually then using the rooms at that time, I take it? A. Correct.

Q. So that the housekeeping function is basically a daytime function? A. Basically a daytime function with the exception of the summer where we employ a maid from 11:00 in the morning until 7:00 in the evening.

Q. Because of travelling, you have more people in and out? A. Correct.

Q. Does your company keep any written records of the amount of time that Hancock actually does physical [94] labor and has since February of '73 to the time of the election? A. No.

Q. I take it that you don't even keep those of the maid except the hours that they work? A. Correct.

K. King, for Employer, Cross.

Q. And, of course, as were the case with the maids, you haven't walked around watching Hancock do her work between February of '73 and the time of the election on a routine basis either, have you? A. I have not spent an entire shift. With either Mrs. Hancock or with another maid, no.

Q. In other words, you haven't made it your purpose to follow her around and check on her to see how she's doing. I'm talking about February, '73 until the time of the election. A. No, not on a continual basis.

Q. Now, as of the time that you became ill, Mr. King, how long had Sandra Nichols been employed? A. She had been employed about a couple of months before we opened. I don't know the exact time.

Q. So she was there most of the time? A. Most of the time.

Q. Was she, in point of service. . . I don't know her age so I'm going to have to be careful. . . the oldest hostess-cashier? [95] A. No, she was not.

Q. There was one that had greater service? A. Excuse me, in point of service?

Q. In point of service? A. Yes.

Q. I said I'm going to be careful, I'm not asking about her age. A. Right.

Q. Now, at the time you became ill, how many hostess-cashiers were there, full-time? A. There were two full-time and one part-time.

Q. Who was the other one? A. Mrs. Sam.

Q. S-a-m? A. S-a-m, right. And Kathy Garigal.

Q. Well, which was which? A. Kathy Garigal was the other full-time hostess-cashier.

Q. How do you spell her last name? A. G-a-r-i-g-a-l, I believe.

Q. That's close enough. Full-time? A. Full-time. And Mrs. Sam was part-time.

K. King, for Employer, Cross.

Q. Who set the schedule of hours of Nichols? A. Who set the schedule of her hours?

Q. Yes. [96] A. I did.

Q. And who set the schedule of hours of Garigal? A. I set those, too.

Q. And were they overlapping hours sometimes or were they different hours sometimes? A. Sometimes they would be overlapping hours, some days Sandy worked in the evening and Kathy might work in the morning. They might swap shifts and they may be overlapping in some areas, some time periods.

Q. And when did Mrs. Sam work? A. Mrs. Sam . . .

Q. As needed? A. As needed, right.

Q. Now, what was the function of the hostess-cashier? A. The function of the hostess-cashier is to, number one, seat the people.

Q. That's whoever the hostess-cashier on duty was? A. Right.

Q. Was responsible for seating all guests? A. Right. Presenting them with a menu, stationing the girls in the dining room at their various stations.

Q. Now, will you describe that function? Was that on a daily basis? A. Yes.

Q. Verbal instructions? [97] A. Yes.

Q. You have tables that are numbered? Is that the . . . A. We don't have tables that are numbered.

Q. You can't see the numbers but do you refer to them as numbered tables? A. No, we have sections of the dining room.

Q. I see. As of the time of your illness, what were the minimum to maximum number of waitresses on duty at any one time in the dining room? A. Maybe three and maximum six.

K. King, for Employer, Cross.

Q. Now, how did the. . . I'm sorry. Continue to describe the functions. I interrupted you when you talked about assigned sections. A. They would assign sections to the waitresses and provide them with both restaurant checks and bar checks. They would take care of the salad bar to make sure that was stocked and filled, check the waitress sections to make sure that the coffee was there and that the underliners were there, silverware were there, the tidiness of the dining room, the PA system was working, that the lights were right, right degree of atmosphere, to be alert to customer requests and to where they might want to sit in the dining room. They might want to sit next to the window or entertainment. Also to check with the [98] customer as to the service they're getting and see that they're well pleased.

Q. Now, normally that is to say, most of the time, who, in the management of the Inn, is physically located in the dining room during the hours of employment to whom either customers or waitresses or various bus boys may turn in that room for advice, complaints, direction, any of the numerous problems that come up? A. That would be the hostess-cashier.

Q. And there were bus boys, I gather? A. Right.

Q. From what minimum to what maximum? A. Actually none. We can operate without a bus boy to two or three.

Q. Okay. And together with the waitresses and the hostesses-cashiers, those were the people physically working in the dining room? A. Right.

Q. By the way, what's the relationship physically between dining room and the cocktail lounge? A. They're adjacent to one another.

Q. Connected? A. They connect, yes.

Q. I think you mentioned that from time to time. . . [99] withdraw that. Have you completed the description of the duties of the hostess-cashier? I don't think you said they took cash. A. Yes, she takes the customers money.

K. King, for Employer, Cross.

Q. And makes change? A. And makes change. She also records the checks on a cash form and on a charge form and she disperses tips to the waitresses that would be on charge, checks and so forth.

Q. Is that done on a daily basis or is it done at the time the charge is rung up? A. At the end of the shift at the time the charge is rung up.

Q. In other words when a charge account customer puts a gratuity on, a record of that is kept? A. A record is kept.

Q. For the particular waitress and at the end of the shift the waitress is paid money out of some cash? A. Right.

Q. And the hostess-cashier does that? A. Right.

Q. Now, does that describe. . . A. That's pretty descriptive.

Q. In addition from time to time you said she would [100] give somebody water? A. Right.

Q. Get a chair and put it. . . A. High chair, boost the chair.

Q. Okay. You testified earlier, I believe, that the bartender, whoever is on duty, needing extra waitresses in the cocktail lounge, will get them without going outside and calling somebody in. That is to say, we'll get them from the available supply of waitresses on duty. A. Right. If the hostess-cashier was on duty and a party, say, this was at 10:00 o'clock in the evening and there was a party of 10 or 15 who walked in for drinks and to hear the entertainment, the bartender on duty would say, "We need a waitress on duty."

Q. He would say that to the hostess-cashier? A. Right. If the hostess-cashier had checked out and gone home and it was 12:30 in the evening and there was no hostess-cashier there and there may be a waitress that had a large table that had just left, then the bartender would talk directly to the waitress or he may talk to the assistant innkeeper.

K. King, for Employer, Cross.

Q. But while the hostess-cashier is there, he would go to her? A. Right.

[101] Q. And then the selection is made by the hostess-cashier of the waitress that's going to go to work in the cocktail lounge? A. Usually she would ask who would like to stay because after a girl has put in a busy night, they are not too enthusiastic about staying. So it's a voluntary-type situation.

Q. Does the hostess-cashier ever persuade anybody to stay? A. She has no authority to persuade them.

Q. You don't know, in fact, whether she has persuaded them from time to time? A. No, I don't.

Q. Now, did there come a time in September, 1972, when an advertisement was placed in the newspaper and, if so, state the newspaper, asking for waitresses and stating in the ad that they could see either you or Mrs. Nichols? A. Correct.

Q. Is that an accurate description of what the ad said? A. Would you rephrase the question, please?

Q. Is that an accurate description of what the ad said? A. Yes.

[102] Q. Who caused that to be placed in the newspaper? A. I did.

Q. And was that in a local newspaper? A. In the Dunkirk Evening Observer, yes.

Q. And you don't have a copy of that ad, do you? A. No, I don't.

Mr. Lipsitz: Do you, Mr. Drenning?

Mr. Drenning: No.

Q. (By Mr. Lipsitz) How did it identify Mrs. Nichols? A. Mrs. Nichols was the most full-time hostess-cashier we had.

Q. No. How did the ad identify Mrs. Nichols? A. It said, "See Mr. King," or it might have had "Mr. King or the Inn-keeper or Mrs. Nichols."

K. King, for Employer, Cross.

Q. And did she interview applicants? A. Yes, she did interview applicants.

Q. Do you know how many? A. No, I have no knowledge of how many she interviewed.

Q. Did she speak to you about waitresses she interviewed?
A. Yes.

Q. Did she make any recommendations? A. Yes.

[103] Q. How many recommendations would you recall?
A. She'd make recommendations about the employees. . .

Q. No. How many recommendations? A. Oh, probably at least a dozen. I don't have the exact number.

Q. First. . .of those dozen of which you do not have an exact number, how many were hired? A. Generally speaking, all of them.

Q. Over what period of time did she recommend approximately a dozen waitresses to be hired? That's my question? A. Over what period of time?

Q. Yes. Withdraw my question. I think you agreed or recall that it was in September, '72, that the ad was placed. A. Correct.

Q. You had been open three or four. . .two or three months at that time? A. Correct.

Q. No. . . A. We opened in July.

Q. In July of '71 you opened. This was a year after. A. Right.

Q. What caused the need for additional waitresses? [104]
A. We were having a turnover in this department and for convenience sake, I asked her name be on there.

Q. Well, the need for the ad was because you needed new waitresses because of a turnover? A. Correct.

Q. Now, starting with that ad, she began interviewing people, I take it? A. She interviewed people before then.

Q. Even before then she interviewed them. I'm asking you over what span of time did she interview waitresses as ap-

K. King, for Employer, Cross.

plicants for employment? A. There's no span of time. Many hostesses and cashiers have interviewed. . .

Q. I didn't ask that. I asked over what span of time did Mrs. Nichols interview applicants for employment as waitresses? A. I don't recall the span of time.

Q. That's a responsive answer. It started in a period prior to '72, I take it? A. It could have likely.

Q. And did it last during the full course of her employment? A. The capacity of hostess-cashier, yes.

Q. That she interviewed applicants as waitresses? [105] A. Right.

Q. You can recall a dozen recommendations that she made and a dozen recommendations that were followed by you? A. Most generally, yes.

Q. That's what I gather you meant when you said, "most generally". When she recommended, you accepted? A. Right.

Q. And those persons subsequently were hired; whether they stayed or turned over is another story, is that correct? A. Correct.

Q. Was there ever an occasion where she recommended an employee to be discharged? A. Yes, there was.

Q. And when was that and who was the employee? A. She had brought to my attention several employees that, for tardiness reasons and so forth, she felt I should speak to them which I did speak to them.

Q. I'm not being critical of you but I don't think you answered my question but that's all right. On more than one occasion she spoke to you about the level of performance of waitresses? A. Right.

Q. Would that be just waitresses or maybe a bus boy? [106] A. Waitresses and bus boys, right.

Q. Do you recall her talking to you about tardiness on the part of one or more of them? A. Yes, I do.

K. King, for Employer, Cross.

Q. What did you do as a result of the information she conveyed to you? A. Discussed the situation with her and a notice was posted in the kitchen and discussed it with me that we were not going to tolerate tardiness and that tardiness was going to result in more than three times, that termination would be exercised.

Q. And who . . . was there a subscription to that notice? A. I don't understand the word "subscription".

Q. Signed or not, did somebody's name appear on it? A. I usually initial all correspondence.

Q. Was her name on it? A. I don't recall.

Q. Was it addressed to somebody? A. Yes, it was.

Q. To whom? A. All waitresses.

Q. So that it was then designed for the attention of waitresses? A. Right.

[107] Q. Who composed it? A. Mrs. Nichols did and I read it and approved it.

Q. Did you change it? A. I don't recall whether I did. I don't believe I did.

Q. Now, the consequence of her talking to you on several occasions about the tardiness of employees, was this notice that you told her to compose with which she did which you initialled and posted. . . A. Yes.

Q. . . . was there any other consequence regarding the individual employee who was the subject of the mention of tardiness to you in any instance? If you can recall? A. I don't recall.

* * *

[108] Q. (By Mr. Lipsitz) All right. You presently cannot recall whether or not as a result of her talking to you about tardiness any action was taken against any particular individual? A. No, I can't.

K. King, for Employer, Cross.

Q. Was there any time when she talked to you about her recommendation to discharge an employee? A. Not that I recall. The tardiness is the one I recall most. . .

Q. Have you read the Regional Director's recommendations [109] in this case that preceded your company's request to the National Labor Relations Board for a review and for this hearing? A. Yes, I have.

Q. I call your attention to the statement on Page 3. You may, if you want to, follow with a copy of it. A. May I have one?

Q. Since I only have one, somebody else is going to have to supply it to you. Maybe Mr. Drenning, if he has it.

Mr. Drenning: You're talking about the report?

Mr. Lipsitz: Yes.

Q. (By Mr. Lipsitz) Will you turn to Page 3? A. Yes.

Q. And the second paragraph under the caption, "Sandra Ann Nichols", fifth line, the statement "On at least one occasion she effectively recommended the discharge of an employee," and then the sentence goes on to mention other matters to the close of the quote. Does that help refresh your recollection about effectively recommending discharge? A. Yes, it does refresh my memory.

Q. Well, to the extent that you can recall anything more about it now. [110] A. I can't recall the person by name, no.

Q. Do you recall any incident that was involved without regard to the name of the employee? A. Yes, I recall the incident and it was as a result of this that we posted this memo on tardiness. That's my recollection of it.

Q. You mean that there was a person who was tardy three times? A. Was tardy three times, right.

Q. Did Mrs. Nichols come to you and say, "This person has been tardy three times and he or she ought to go"? A. She

K. King, for Employer, Cross.

brought to my attention that the memo hadn't apparently done much good, that this party, in spite of the memo, had been tardy three times.

Q. And the consequence of her calling this to your attention was that the employee was fired, terminated? A. She did not terminate.

Q. I said, the consequence of calling it to your attention, she was fired? A. I talked to the employee before she was terminated.

Q. And then you terminated the employee? A. Right.

Q. All right. You may hold, if you don't mind, [111] hold on to that because it may be helpful. Now, is there a written weekly work schedule for the dining room personnel, the hostesses, the waitresses and bus boys? A. Yes, there is.

Q. Did she prepare that? A. She prepared it after consulting with me, yes.

Q. What was the nature of her consultation with you? A. Number of people that we had available, special parties that we had coming up.

Q. Excuse me. In other words you tell her what was going to go on in the next week? A. That's right.

Q. Go ahead. What else did you tell her during her consultations coming up? A. The special events, parties, parties coming up, the room status, the sales representative would talk to her, the assistant innkeeper about large and small functions, coffee breaks and so forth.

Q. Now then, would she then, on the basis of that information, prepare a weekly schedule? A. She'd prepare a weekly schedule, yes.

Q. How many days in advance were they prepared or were they posted? A. They were posted a week in advance.

[112] Q. So that an employee, these employees had a week's notice of what their schedule was going to be? A.

K. King, for Employer, Cross.

You've got to understand it's a skeleton schedule at this point subject to change at any time.

Q. Those employees that were on it knew a week in advance what they were scheduled to do? A. Right.

Q. Now, did she herself then prepare that schedule showing the days and the hours? A. She wrote out the schedule, yes, but also consulted with me on the scheduling.

Q. I understand that. Did she consult with you after she wrote it out or before she wrote it out? A. Generally before.

Q. And then, as a consequence of what information you gave her, which included the special functions and with your knowledge the estimate of the season's requirements were, she would then write out the schedule, is that correct? A. Correct.

Q. And who told her the number of people that were available in a complement of dining room personnel, hostesses, bus boys and waitresses? A. I would tell her that, the sales representative would tell her the number of people and we would work [113] together to establish the schedule.

Q. In other words she also had available to her, when she worked up the schedule, who the employees in the employ of Holiday Inn in Dunkirk would be available to provide on that schedule? A. Right. She knew better than I, the school commitments, for instance.

Q. She would be told what the availability was and you would tell her to go ahead and make the schedule out? A. Subject to change.

Q. Right. Did she, on that schedule, assign the hours? A. If the hours were posted on the schedule which she placed but then this is to cover the dining room that we have.

Q. Of course. Mr. King, I understand that she didn't just dream up a schedule of employees without regard to the needs of the business. Did she nevertheless, concerning Waitress A, put her down on a particular day of the week for particular hours? A. Yes, she did.

K. King, for Employer, Cross.

Q. And the same for the other waitresses? A. Right.

Q. And if you have bus boys employed that week. . . .

[114] A. Yes.

Q. And if you had, as you did, other hostess-cashiers during that week for them, too? A. Yes, we would work that out.

Q. So she would place on the schedule the days and the hours of employment of those people after consulting with you and the. . . . A. Sales representative.

Q. Sales representative, about what needs there would be that had to be met? A. Right.

Q. Which included the opening and closing hours of the facilities? A. Right.

Q. The affected traffic, special events? A. Right.

Q. And the availability of personnel to work at those schedules? A. That's correct.

Q. Now then, I take it there would come a time for week to week whereas the preceding week you may have three waitresses scheduled to work or four, the following week, as a result of this process you mentioned, there were going to be five or six waitresses because you're now getting to a ski season [115] or peak summer season or special events. . . . A. Right.

Q. Who would inform. . . . what was the process, rather, of calling these other waitresses to come into work? A. Either I would call her, call them in, the sales representative or I would direct the hostess-cashier.

Q. Meaning Nichols? A. Meaning Nichols or any other hostess-cashier. Not always her.

Q. Now, I'm talking about the making up of the schedule. You've got a schedule for the week, a slow week. You must have slow weeks? A. Yes.

Q. And that its continued to be slow for a period. Now,

K. King, for Employer, Cross.

you're coming into a busier period. So the next week's schedule you. . . Nichols has been talked to, you've told her what's in view. A. Right.

Q. This business is going to increase and it's quite clear that the schedule being covered has to be expanded by putting on more waitresses. A. Correct.

Q. Who then would tell the additional waitresses to come into work? [116] A. Sandy Nichols would or someone else other than her.

Q. All right. Who other than her? You? A. Myself.

Q. The sales manager? A. Sales manager and if we needed additional employees for next week, maybe the schedule was posted.

Q. All right. A. All right, we made out the skeleton schedule and we now need additional employees for the following Wednesday. The hostess-cashier in the evening, we might direct her to call.

Q. That's to change an existing schedule? A. Right.

Q. But in connection with the original schedule which clearly you've stated is subject to change and the consultation method you've described with you and Nichols and the sales manager, if you needed for the following week extra waitresses she would be the one that would normally contact the additional waitress or waitresses and say, "You want to work the schedule next week?" A. Yes, but she would know the availability whereas I would not.

[117] Q. But she would only do it at your approval? A. Right.

Q. You didn't let her make the decision whether you're going to go up from three to five? A. Right.

Q. And she would normally convey that information? A. Right.

Q. Now, in this same paragraph, I'm referring to the

K. King, for Employer, Cross.

Regional Director's Report, in the fifth last line there appears this sentence, "The sales representative who has overall responsibility for parties and the innkeeper generally follow Nichols' recommendations regarding which waitresses should be assigned to parties." Is that a correct statement? A. Not completely.

Q. Well, tell us what's incorrect about it? A. She would know the availability of the employees.

Q. Then would she make recommendations? A. She would make recommendations of their availability. However, the sales representative would be in a position to know what type of service the guest had required and he would know or she would know by working with the banquets and so forth the capabilities of this type of service. So even though Waitress A may be available, and she, Mrs. Nichols, [118] would say that Waitress A would be available, it doesn't necessarily follow that she would work that party.

Q. I asked you if the statement was correct in the sense that. . . withdraw that. Well now, what's incorrect about the statement. A. What's incorrect about the statement is that. . . let me re-read the statement. "The sales representative who has overall responsibility for parties and the innkeeper generally follow Nichols' recommendations regarding which waitresses should be assigned to parties." This is generally so far as most parties go.

Q. That's what the statement says, doesn't it? A. Yes.

Q. You're saying that, departing from the norm, that is to say, on other than the general occasion, there were times when you or the sales managers would say, "We want Debbie Smith rather than Jennie Jones to be the waitress on this occasion." A. Right. Now, of course, the parties that we're referring to can be as small as a coffee break or as complex as a party for 500.

K. King, for Employer, Cross.

Q. But this statement that I quoted to you then is a correct statement, isn't it? [119] A. With respect to the fact that she knows the availability and we generally follow. . . .

Q. No, with respect to the statement where it says that the sales representative and you "generally follow Nichols' recommendations regarding which waitresses should be assigned to parties." That's a correct statement? A. I'm saying it's a correct statement. However, we also take into consideration the guest requests and the service requests.

Q. Of course. But, generally, is it or is it not, generally you follow her recommendations? A. Generally keeping in mind the other two things that I mentioned.

Hearing Officer: Let's go on to something else. I think we made our point.

Mr. Lipsitz: Well, I thank you, Mr. Hearing Officer, but I'm going to stay on this for a minute with a series of different questions.

Hearing Officer: I mean with respect to an analysis of this.

Q. (By Mr. Lipsitz) Can you tell me on any occasion when her recommendations regarding which waitress should be assigned to parties were not followed? I want to be very specific about it. [120] A. I don't have a specific name, no. I can recall changing schedules that were set up where we had five or six waitresses we were going to put on a particular party and we changed this.

Q. What change can you recall making? A. The change to concur with the count going up or the count going down.

Q. You mean the number of people? A. The number of people or maybe we assigned a waitress to, say, party A and we need another body to help serve that party. We may take a waitress that is scheduled for the dining room and use her in

K. King, for Employer, Cross.

conjunction with that party. Again, this all is subject to change.

Q. Normally, when a banquet or a party has been booked, you have a discussion with the sales representative and with Nichols, do you not, or did you not, concerning which waitresses would handle those affairs? A. Yes, we did and sometimes we brought the chef into this.

Q. All right. Normally and again, recognizing that you made it clear that it's always subject to change, normally, she would say, "The following women are the persons that I would suggest be on this party or [121] banquet," isn't that correct? A. She would say, "The following people are available and I suggest that we work at this party."

Q. And normally, you and. . . excuse me. . . and the sales representative and/or the chef would say, "Okay"? A. Normally, yes.

* * *

[122] (Afternoon Session—1:45 P.M.)

Hearing Officer Tucker: On the record. Take the stand, please. You're still under oath.

Mr. Drenning: Before Mr. Lipsitz continues his cross-examination, I neglected to offer into evidence the function sheets so I'd like to do that at this time.

Mr. Lipsitz: No objection.

Mr. Drenning: I believe they were Exhibits 1 through 4.

Hearing Officer: All right. Employer's Exhibits 1 through 4 are received.

(The documents above-referred to, heretofore marked Employer's Exhibits 1 through 4, were received into evidence)

K. King, for Employer, Cross.

CROSS EXAMINATION (Cont'd.)

Q. (By Mr. Lipsitz) Mr. King, did you know an employee whose name was Ricki Booth, a waitress? A. Yes, I do.

Q. And when did she work for. . . A. She was one of the first employees we hired when the Inn opened.

Q. How long did she remain? A. Roughly eight months, I believe.

Q. And what were the circumstances of her termination? [123] A. She decided to leave our employment because of a personal reason.

Q. Are you certain she wasn't fired by Sandra Nichols? A. I'm certain that she wasn't fired by Sandy Nichols.

Q. Are you certain she wasn't told by Sandra Nichols she was fired? A. No, sir, not told by Sandra Nichols she was fired.

Q. Were you present during any conversation she had with Sandra Nichols about her termination? A. I was present about Ricki Booth leaving our employment, yes.

Q. No, any conversation with Ricki Booth and Sandra Nichols and you? A. Yes.

Q. When did that conversation take place? A. That conversation took place by telephone and then subsequently in my office.

Q. The telephone call was between Sandra Nichols and Ricki Booth? A. Sandy Nichols got Ricki on the telephone and then I discussed the matter with Ricki Booth.

Q. Do you know an employee by the name of Jessie [124] Szocki, S-z-o-c-k-i? A. Yes, I do.

Q. Is she still employed by you? A. Yes.

Q. Were you present when she and Sandy had any conversation about this incident? A. About Ricki?

Q. Yes. A. No, I was not, not to my knowledge.

Q. All right. You know an employee by the name of Ann Perisi? A. Yes, I do.

K. King, for Employer, Cross.

Q. Did she work for you? A. Yes, she did.

Q. In what capacity? For how long? A. She worked as a waitress and also as a cocktail waitress.

Q. When was her last time she worked? A. She hasn't worked in over six months. I don't know the last day of her employment offhand.

Q. Could it have been October, 1972? A. It could be.

Q. Do you know the circumstances of the termination of her employment? A. Yes, I do.

[125] Q. Would you tell us what they were? A. Yes, I will. We had a convention coming in and all employees were scheduled to be there for duty. As a matter of fact, we were short employees. She called the hostess-cashier on duty in the dining room and . . .

Q. Who was that? A. Mrs. Sam at the time. Mrs. Nichols was there also. And she told Mrs. Sam that she was ill and she could not come into work. I instructed Mrs. Nichols to try to locate Miss Perisi by telephone. She was unable to do so. And I told Mrs. Nichols that when Miss Perisi came in that I wanted to talk to her.

Q. Did she come in? A. She came in either the day after or the following day, I don't recall the exact day. It was shortly after.

Q. Did she speak to you? A. Yes, she did.

Q. Did you have a conversation with her? A. Yes, I did.

Q. And was she continued on here in her employment? A. No, she was not.

Q. Do you know an employee by the name of Lois Lop-ski? [126] A. Yes, I do.

Q. In what capacity was she employed? A. Dining room waitress.

Q. Until when? A. I don't know her last day of employment offhand.

K. King, for Employer, Cross.

Q. Do you know the circumstances of the termination of her employment? A. I believe that was tardiness. I don't recall firsthand.

* * *

[134] CROSS EXAMINATION:

Q. (By Mr. Newsome) Mr. King, was there a system of holding management meetings on Friday? A. We commonly held meetings on Friday and/or Tuesday and we did this especially around the areas of convention time and peak periods of business. We didn't then hold them every day. We might have gone three weeks with meetings every week there during the three weeks. We might have missed a month. We might have missed six weeks, depending on the type of activity in the Inn.

Q. I understand. Now, who generally attended those meetings? A. Usually the people that attended those meetings were the chef, assistant innkeeper, the sales [135] representative, a hostess-cashier and myself and the housekeeper.

Q. And the hostess-cashier being Mrs. Nichols? A. Mrs. Nichols being the one that was the most senior and there during the time of day we had the meeting.

Q. And Mrs. Hancock, the housekeeper? A. When Mrs. Fitzpatrick was there, she would attend and also with Mrs. Hancock, both would be present.

* * *

Q. Were memos passed around notifying the people of those meetings? A. Yes, several times we did post memos on that.

Q. And those people were named on that particular memo? A. I'm not sure whether they were named or whether it was just termed "Staff Meeting." Sometimes they might have been, sometimes they might not have been.

K. King, for Employer, Cross.

Q. I think Mr. Lipsitz asked you regarding the [136] advertisement in the newspapers. Now, after that advertisement was posted, did you have a conversation with Sandra Nichols during which she asked you why was her name placed on that list? A. I don't recall the conversation with Mrs. Nichols. I did put her name in there, as I mentioned earlier, for convenience sake because they were having to rehire quite a few waitresses.

Q. But you don't recall her asking you why her name was posted there? A. No.

Q. All right. Just to clarify something, in regard to, I think, an employee named Perisi who was absent one day and she was terminated, it is your testimony that you terminated her or you instructed Nichols to terminate her? A. I believe I terminated the employee. I do remember discussing this situation with Sandy and Mrs. Nichols and it was as a result of this tardiness memo that I told Sandy to prepare that we. . . that I discussed the termination. Now, I may have said, which is not my practice, I may have said to terminate the employee but, I believe I terminated the employee.

Q. Do you know whether or not you instructed Nichols to ask for her uniform? [137] A. Yes, I did, which is the policy after any employee has been terminated, when they come in the office for their check, that we get their uniform back so that other employees can use it.

Q. Now, is it a practice in regard to banquets and dinner parties, that the innkeeper and the sales representative seek the opinions of Nichols as to who ought to work those parties? A. We do seek the opinion of Mrs. Nichols or the hostess-cashier that does the great amount of scheduling because she would know the availability of the employees, there is their school commitments and part-time people. We have, for instance, waitresses that prefer to work banquets and waitresses who prefer not to work banquets.

K. King, for Employer, Cross.

Q. And are you testifying today this has nothing to do with her evaluation of the qualification of those waitresses, just their availability? A. The availability. Naturally, being a hostess-cashier, she has the evaluation of their performance especially if they had worked in the dining room. However, banquet waitresses, Mrs. Nichols did not directly supervise this area, so we would not know all of the capabilities in this area. The sales representative would be more knowledgeable in this [138] area.

Q. Do the girls submit days off and vacations to Mrs. Nichols? A. Yes.

Q. And then she, in turn. . . A. She, in turn, would refer them to me and, if at all possible, we would try to honor those requests.

Q. Now, regarding the employee. . . I think it was Perisi, was out sick one day and was later terminated, now did she later have a conversation with you regarding why she was discharged? A. Yes, she did have a conversation with me.

Q. And what took place during this conversation? A. The conversation was regarding the discharge and I told her that we had tried to. . . she had called in sick, reported the sickness to Mrs. Sam who, in turn, reported it to Mrs. Nichols. All of the employees were aware of the heavy period of business we were coming into and since I tried to reach her by phone and she was not available, I could not verify that she was sick nor could she tell me. . . there was no doctor's excuse. There was no proof of her illness.

Q. Do you recall whether or not she asked you if Nichols had authority to discharge her? A. I don't recall that.

Q. Well, do you recall stating to her that you were [139] backing or supporting Nichols in regard to the discharge? A. I'm saying that. . .

Q. My question is do you recall making that statement? A.

K. King, for Employer, Cross.

Would you rephrase it for me, please? A. Do you recall stating to Perisi during this conversation words to the effect that you were supporting Nichols in regard to the discharge? A. Well, I would be doing the discharging. Nichols would not be. I would, naturally be sympathetic towards the scheduling problems that any hostess-cashier would have.

Q. So is it your testimony you did not make the statement? A. It's my testimony that I would discharge the employee.

Q. But that's not my question. I'm not trying to be argumentative with you but my question is do you recall making that specific statement? A. That I support Mrs. Nichols in the discharge, no, I don't recall making that statement.

Q. Now, did Nichols make out the employee's schedule for work? A. The scheduling of the employees, we have two [140] areas, if I might explain.

Q. Yes. A. We have the dining room and the banquet room. Now, basically, in the dining room we have a nucleus of employees on both the breakfast and lunch shift and a nucleus of employees on the dinner shift. By and large this nucleus of employees which . . . wish to remain in the dining room. We also have girls that prefer banquets and we try to give them the banquet work. So the schedule is made up in the dining room week-to-week by the previous week's schedule. The hostess-cashier and, in this case, Mrs. Nichols, knowing the requests of the waitresses, knowing their school schedules, what day off their husband may have, we try to maintain a pattern in there if at all possible.

Q. Now, Nichols made out the schedule. Did you initial or sign those schedules? A. She may have, but I always did. She would make out . . . if I can add to this . . . we would have, as I say, a basic schedule and then we would discuss the

K. King, for Employer, Cross.

availability of employees in light of functions, the peak periods of business. She would then come back in after we had talked about the scheduling and I would approve the final schedule which would be [141] posted which is still subject to change.

Q. Okay. Now, prior to the middle of May, 1973, did you initial or sign those schedules prior to that time? A. I may or may not have. I don't think I signed everyone, no. I saw them. Whether or not I initialed all of them, I can't be sure.

Q. But it is your best recollection that you did or did not? A. That I did not but I did see them.

Q. Now, when there was changes requested, when employees requested changes on that schedule, who did they make those requests to? A. The changing in schedule would be made to the hostess-cashier.

Q. This is Mrs. Nichols? A. But if could be made to the assistant innkeeper, myself. I could be waitress-to-waitress.

Q. Now, when the requests were made to Mrs. Nichols, did she make those changes with or without consulting with you? A. She usually made them without consulting me but she would tell me if the schedule changes. I'd also be reviewing the schedules on a day-to-day basis and I may have asked her why certain things were [142] changed.

Q. But in the first instance, it was her decision? A. Right.

Q. Now, did Nichols also make out the schedule, weekly schedule for all waitresses, bus boys, and other hostess-cashiers even though they were not on her shift? Is that correct? A. Yes, she made out the schedule of all the employees, hostess-cashiers and bus boys after discussing the week's business with me and the sales manager.

Q. It's your testimony that Nichols did not select the waitresses to work the parties? A. She recommended waitresses to work the parties but, in all cases, they were not

K. King, for Employer, Cross.

followed. She did know the availability of the employees. Supposing that we had three or four functions going on at one time, we may elect to have six people with these functions. Since that time after the schedule was posted, we may have two more functions for the same day which would necessitate constant changing. So, I mean, it wasn't absolute once the schedule was posted in the kitchen for the waitresses. An employee may come to me and request a change which, in turn, I would change or the assistant innkeeper [143] would change. Not necessarily through Mrs. Nichols.

Q. But they could also go to Mrs. Nichols? A. True.

* * *

Q. Okay. Now, during the conversation I think Mr. Lipsitz asked you some questions regarding the discharge of Ricki Booth? A. Right.

Q. Now, during the conversation with Nichols regarding this discharge, do you recall stating to [144] her that it was her job to discharge or it was her duty, words to that effect? A. No, I do not recall saying that.

Q. Does Nichols also pass out the waitress' paychecks? A. She has in the past, yes.

Q. Are other hostess-cashiers also engaged? A. Yes, they also have in the past.

Q. As to Ruth Alice Hancock, she was the assistant housekeeper? A. Right.

Q. Now, does she also interview applicants for employment? A. Yes, she does interview.

Q. Now, after she interviews the applicant, does she instruct them to report to work or does she make recommendation to you regarding them? A. She usually makes recommendation to me unless we have previously discussed it whereby I would say to her, "Mrs. Hancock, if the woman

K. King, for Employer, Cross.

looks good and she performs the work and she sees what the other girls are doing and thinks she can handle this, go ahead and hire her."

Q. So you, on occasion, instructed her to interview her and if she finds her satisfactory, to hire her? A. Right. But as a preliminary thing. The [145] employment applications are then brought to my office and we have a standard procedure on all employee applications. We have to check on their references and see if they have a police record and various things that the Holiday Inn of America requires. But not in all cases do we do this before the employee is physically working on the property.

Q. Does Mrs. Hancock have authority to maintain discipline or order in the. . . A. As far as the routine job description, yes. She has to make sure that the assignments are clear, that the sections the maids work in are clear, that the maids have supplies to work with. As far as any disciplinary action, she would consult me before going ahead with anything like that.

Q. And how about Mrs. Nichols, does she also have that authority regarding the waitresses? A. Every hostess-cashier has discipline prerogatives to a certain extent. As far as. . . by "discipline," I mean orderliness of the dining room.

Q. Maintaining. . . A. Maintaining the right atmosphere, make sure the food is properly prepared and served right. But also, as far as the dining room goes, the assistant innkeeper and myself would be there the peak business [146] periods. We may directly talk to a waitress, for example, or a bus boy rather than discuss it with the hostess-cashier depending on what the circumstances would entail.

Q. Okay. Now, during the periods when you're not there, there is disarray or disorder in the dining room, what would the hostess-cashier, in this particular instance being Mrs.

K. King, for Employer, Cross.

Nichols, do to correct that? A. If she cannot correct the disorder in the dining room, she would go to the assistant innkeeper or myself.

Q. Before she goes to the assistant innkeeper or yourself, what would she say to the particular person involved? A. You're speaking of the person as of . . . as a waitress?

Q. Yes. A. First of all, there might have been some confusion over the dining room stationing, for instance. If she can clarify the stationing situation, this would resolve the problem. If there was a guest complaint, the guest would say, "I would like to see the manager." They wouldn't say, "I want to speak to the hostess." In which case the waitress might tell the hostess or the waitress might come in the [147] office and say, "There's a guest out here that's mad."

Q. About how many waitresses are generally employed during a given period of time, a given shift? A. It varies with the season.

Q. Could you give us a range? A. Surely. We have as few as three employees on breakfast and lunch to as many as six employees for breakfast and lunch. We may have three or four employees for dinner or we may have seven or eight employees for dinner. We may have one bus boy. We may have no bus boys. We may have three bus boys. During the period for three until 5:00 we generally operate with one waitress, no bus boy and no hostess-cashier. Also during morning periods, in the winter time, several times we would operate from 7:00 A.M. to 11:00 A.M. without any hostess-cashier.

Q. Now, in regard to the maids, about how many maids are employed? A. In the summer time we would have 14. In the off season, there would be six to eight.

Q. Now, earlier this morning I think you stated it's your practice to speak to all employees before they are hired. Is it not correct that a substantial number of employees are hired

K. King, for Employer, Re-direct.

at your direction by you telling employees, Mrs. Nichols and/or the [148] housekeeper to interview an applicant and if they are satisfactory, to hire them? So in that regard then, they are hired without you actually interviewing them? A. Correct. Also to continue on with that, most of the employees at the Holiday Inn currently employed have been recommended by friends or waitresses that are currently employees of ours.

Q. But they are not interviewed by other employees; they are interviewed by either the hostess-cashier or the assistant housekeeper, yourself, someone in that line? A. That's correct.

Mr. Newsome: Okay, I have no further questions.
Thank you.

Hearing Officer: Mr. Drenning?

Mr. Drenning: Regretfully, I have some, Mr.
Hearing Officer.

RE-DIRECT EXAMINATION:

Q. (By Mr. Drenning) With respect to the scheduling, Mr. King, much has been said about it, but just briefly would you indicate what the hostess-cashier does in preparation of that schedule, how she starts it? A. How she starts the schedule, basically, she would know the employees on the previous week's schedule and know what their wishes and demands would be for [149] days off and school commitments and she would use this as a basis to work from.

Q. So she takes last week's schedule, she rewrites it, I take it, with the same names in? A. Basically the full-time employees, yes, with the same names.

Q. Does she take that to you or what? A. No, not at that point. Then I would get together with her and the sales manager, and we would discuss the upcoming functions for the next week.

K. King, for Employer, Re-direct.

Q. This is in connection with breakfast, lunch and dinner functions and. . . A. Yes. The employees' schedule for banquets would appear on the same weekly schedule as the employees for the dining room.

Q. So if there was a waitress to be assigned that, it would be considered the dining room hour waitress? A. Right, indicated by a single or block in the square that would indicate that that particular waitress was assigned to a function.

Q. So to establish availability of waitresses, she would consult. . .you mentioned students. Are you referring to college students? A. Yes, I am.

Q. So a waitress who may have work one evening [150] would be committed to class another evening and not available? A. Yes. If we know their schedule so there's not too much of an interruption here, but occasionally things come up because of their school demands and we have to alter their schedule or there might be other personal commitments that waitresses would have.

Q. So she takes last week's schedule, writes the name in, after consultation with the people, as to their availability and then what does she do? A. After she writes the name in, we discuss the functions.

Q. Then she comes to you? A. She comes to me and we review the schedule as it is and then if all the functions are covered for the previous. . .for the upcoming week and the dining room is scheduled with the waitresses that we have available, and there's no apparent other change to be made, then I okay the schedule and I tell her to post it at which time she goes back and probably this is a rough draft, then she would do it for the posting schedule, bring it in again and I would okay it and it would be posted.

Q. And then you indicated, subject to change. . . A. We don't know today. . .today we may know the [151] function for this coming Wednesday. And say that there's 200 persons.

K. King, for Employer, Re-direct.

We may have to project the number of waitresses that we are going to need based upon that 200. The sales manager, assistant sales manager will be in contact with this person on Monday to verify the number. If the schedule has . . . if the function has gone down to 100 people, it necessitates revising the schedule. If it's gone up to 300 people, it necessitates revising the schedule.

Q. That information comes to the sales personnel first? A. Right, and then to me and the hostess-cashier.

Q. If it's an increase in work force, what would the person that receives that information next do? A. The sales manager that receives this information would likely go to the hostess-cashier and would say, "Who else we have available that week, pull in for the schedule," and she might say, "Well, gee, I gave you everybody I have." And then it would be up to him or myself to see what we can do to help get this party staffed.

Q. By temporary people, for example? A. By temporary people, by on-call people that we have.

[152] Q. With respect to your involvement in the dining room, could you indicate how often you're in there in the course of a day? A. I'm in the dining room at dinner time and lunch time and very often at breakfast time. My employees have seen me pour water and bus tables and seat people and take cash and I'm involved in all of these situations which is characteristic of the Holiday Inn of Dunkirk-Fredonia.

Q. Do you take your meals in the dining room? A. Yes, I do.

Q. And all three meals, breakfast, lunch and dinner? A. I don't eat every meal there but I do eat there for dinner and lunch and breakfast.

Q. In your absence, does the assistant innkeeper go into the dining room? A. Yes, and would supervise during the peak periods of business.

K. King, for Employer, Re-direct.

Q. If a maid's working habits were faulty or not a maid but a waitress, if she was distributing food in a manner you felt improper, what would you do in that connection? A. Number one, it would depend on the situation. I would often times speak directly with a waitress. [153] I may mention it to the hostess. Maybe a new girl we're trying and training and we have assigned her to a more experienced waitress.

Q. Would you talk with another waitress on that shift? A. Right, and to the hostess, if it was a training situation. For instance, supposing we had a table of 15, and the waitress was taking the order, the dinner came out and I knew that she needed additional tray stands or additional help in serving this party and the hostess was busy seating other people or taking the room service order, I would say to another waitress that might be nearby, would you give Susie or Judy or somebody a hand which they would inevitably do.

Q. So this is a developing kind of thing. There's no practice or. . . A. It's a concern of the dining room hostess-cashier but it's also the concern of the assistant innkeeper and myself. This is why we are there during the peak periods.

Q. In reference to the newspaper ad, was there any conferral by you to Nichols of authority to hire anybody? A. No, there was not.

[154] Q. Why was her name mentioned in the newspaper ad? A. It was mentioned for convenience sake. As I mentioned earlier in my testimony, we had a lot of people leaving from the dining room and we needed to hire quite a few people.

Q. Did you expect to be away from your office at the time? A. At the time I don't recall the date of the ad but the situation might have arisen where I was in State College for a few days and I wanted to get started with this program. This might have precipitated Nichols' name being on there.

K. King, for Employer, Re-direct.

Q. Now, with reference to Mrs. Nichols' recommendations with respect to hiring and, I think, there was a number tossed out of a dozen employees that she recommended that you hire ultimately. . . is that the number used? A. That's the number I testified to.

Q. Do you know if you talked to most of those people before they were hired? A. It's my practice to but in some cases I might not have.

Q. Have there been other cases where employees been hired where you didn't interview them? A. Yes.

[155] Q. Did you prepare a list of current employees that have been so hired at my request? A. Yes.

Q. Would you consult that list, please? A. Yes.

Q. Would you very, very quickly indicate by referring to that list the numbers of employees and very briefly the circumstances how they happened to be hired? There are a few names on the list. Very quickly, if you will.

Mr. Lipsitz: What's this list?

Q. (By Mr. Drenning) Well, describe the list. A. This is a list of employees that were hired that I did not interview previous to their arrival at the Holiday Inn. First one is John Lawrence, recommended by Arlene Lawrence, who was a waitress and not interviewed. The situation arose that we were in need of a dishwasher. Arlene was working that evening and I said to her, "Do you know anybody who can wash dishes?" And she said, "How about my son?" she said, "I'll give him a call." I said, "Go ahead." Next time I saw him he was behind a dish machine. John Siskar was recommended by Arlene's son. I did not previously interview him before he arrived to work at the Holiday Inn.

Q. What was his employment before he. . . when he began. [156] This is Siskar's employment? A. He was a dishwasher.

K. King, for Employer, Re-direct.

Q. Continue. A. Duane Tingue was recommended by Mr. Richmond, who was a cook. I did not previously interview him before he arrived.

Q. What was his employment? A. He was a dishwasher and also he's been working in the pantry most current. Philip Slominski, recommended by Lucas Slominski, who was the maintenance man. He reported for work in the dining room and then was subsequently . . . had worked in the house-keeping department. I did not pre-interview him.

Q. That was Lucas Slominski was the father of Philip Slominski? A. Correct. Calvin Alstrake, I hired and interviewed Douglas Alstrake, his brother. I asked him if he knew of anyone else who we could hire in that capacity and he said, "Yes, my brother is home from college." So Douglas Alstrake came to my office and called Calvin and Calvin came into work and I did not see Calvin again until he was on the floor dressed to work as a bus boy. Tom Tarnowski was recommended by Bill Carlson. He was a cook in the kitchen. And I had no previous connection with Tom [157] and he was hired by the chef, John Addabbo and without my involvement. Peter Jenkins, who's currently employed as a relief bartender was recommended by Nancy Wittpenn, a banquet waitress and dining room waitress, was interviewed by Mr. Perrigo and I was introduced to him just the other day. I did not see him before he reported for duty. Joan Palsik, Perrigo interviewed her and that was during my illness period and Mr. Chieffo had given the okay on that and I don't know all the involvements here. Marcia Shephard, Mr. Perrigo interviewed and Mr. Chieffo okayed during my absence. Steve I-h-r-i-g, a life guard. We were closing the pool. Our regular life guards were going back to college. Roger Hasin, who was working as a life guard recommended Steven and a woman by the name of Judy Schrecongost. I had no knowledge of . . . I did not see these people when they started working. He mentioned this to

K. King, for Employer, Re-direct.

the assistant innkeeper and I introduced myself to them the second day that they were employed. Charlie Thompson, who was a New Year's Eve Bartender was recommended by Mrs. Thompson, Bobby, who's our cocktail waitress. I did not see him until he was behind the service bar for New Year's Eve. Dorothy Dudek was recommended by Jean S-m-y-c-r-e-k, I believe, who was a banquet [158] waitress. We needed additional labor for a testimonial dinner for Judge Ricotta and the assistant manager called her and I did not see her until the night of the function. She recommended Shirley Beriteno and Janet Beriteno who have worked that party only and have not worked since. That completes this.

Q. Now, these people, because of circumstances and events, were hired without an interview by yourself or the assistant innkeeper? A. Correct.

Mr. Lipsitz: I object to that. He didn't say that. He hadn't testified that they were hired without an interview by himself or the assistant innkeeper. He said *himself*.

Q. (By Mr. Drenning) Referring to the list, did you interview any of those people before they were hired? A. I did not.

Q. Did the assistant innkeeper interview any of those people before they were hired? A. He did in the case of Dorothy Dudek and he was aware of. . .Mr. Killion was aware of the life guard. I don't believe he interviewed them.

Q. Mr. Killion is the assistant? [159] A. Is the assistant innkeeper in charge of sales.

Q. To your knowledge, did he interview anybody? A. Mr. Killion I mentioned talked to the life guard about Steven Ihrig and Judge Schrecongost. He did not interview them *per se*.

Q. Did Mrs. Fitzpatrick interview any of these people? A. No, she did not.

K. King, for Employer, Re-direct.

Q. Did anybody else in your office, by that, I mean the secretary or anybody interview these people? A. In the case during my illness, Mr. Perrigo interviewed Joan Palsik which I testified to and Marcia Shepard.

Q. Did Mrs. Nichols interview any of these people? A. No.

Q. Mrs. Hancock? A. No.

Q. Mr. Straight? A. No, he did not.

Q. Now, with respect to the notice that's been discussed relative to employees' tardiness, would you indicate how that happened to come up? I believe you indicated that was Mrs. Nichols' complaint. A. Yes, we were having trouble during the breakfast period which begins at 7:00 o'clock in the [160] morning and the summer season was over and we were dealing primarily with business men. And we had several situations of tardiness where waitresses would come in at 7:15 rather than 7:00 o'clock. So Mrs. Nichols and I had discussed this situation because we were giving them poor breakfast service and we wanted to correct this.

Q. What did you tell her? A. I told her to draw up a draft of what she thinks we should lay it on the line as far as tardiness goes.

Q. Did you outline the contents? Did you dictate it verbatim? How did you do that? A. We discussed it first and then she brought in a draft and I revised the draft to some extent and I gave it to my secretary, I believe, to type and then we posted the tardiness notice in the kitchen.

Q. So you had a conference about its language? A. Right.

Q. Mrs. Nichols prepared a draft which you reviewed and revised? A. Right.

Q. And you gave it to the secretary and when you got it back from your secretary, what did you do? A. Posted it in the kitchen.

K. King, for Employer, Re-cross.

Q. I believe you initialed it? [161] A. I believe I did but I'm not sure.

* * *

[162] Q. With respect to meetings held from time-to-time, are these meetings always held in a particular area or do you search out various people from time-to-time to describe upcoming events? A. It may be done several ways. We might search out a particular area. As I testified, we had one meeting in the lounge. We've had meetings with just Steve, the sales manager, the assistant sales manager, and myself. We've met in the kitchen, in the linen room, in my office. We've met in different banquet rooms.

Q. Might you go to somebody in housekeeping, somebody in . . . A. Yes, I would go on an individual basis rather than hold a meeting.

[163] Mr. Drenning: I have no more questions.

Mr. Lipsitz: I have some. Mr. Newsome, do you have a copy in the file of any memorandum advising people of meetings scheduled?

Mr. Newsome: No, I do not.

RE-CROSS EXAMINATION:

Q. (By Mr. Lipsitz) You did send memoranda to certain employees about meetings, is that not correct? A. I sent memoranda to the various departments, to the front desk, to the housekeeping, to the dining room, to the kitchen.

Q. Did you mention the names of people who were expected to go to a meeting? A. I did on some, but I don't believe I did on all.

Q. Is there a memorandum that you keep a file of those memoranda? A. Not as a rule, no.

Q. Has there been a memoranda in which Nichols has been advised she is to attend a meeting? A. Yes.

K. King, for Employer, Re-cross.

Q. Once or more than once? A. More than once.
Q. How about Hancock? A. Yes, there has been.
Q. Once or more than once? [164] A. More than once.

* * *

[167] Q. (By Mr. Lipsitz) All right. Who approved Mr. Lawrence for being placed on the payroll? A. Who approved?

Q. Yes. A. I did.

Q. Well now, who told you that . . . withdraw that.

[168] From who did you get the information that he was going to go to work? A. I had spoken to his mother, Mrs. Lawrence and she said that he was available and I said, "Would you call him in?" And she said, "I will." She called him in and when I came back to the kitchen area, he was working behind the dishwasher.

Q. And was he on the payroll at that time? A. Yes.

Q. He would have signed in and started work? A. Yes.

Q. Who did he sign in with? A. In the kitchen at the chef's station.

Q. Well, did Mr. Addabbo then, if you know, approve of his coming to work? A. I don't know whether he did or not.

Q. All right. The next man on the list. Would you give us the name because you went too fast for me. A. John Siskar.

Q. S-i-s- . . . A. . . . k-a-r.

Q. When was he employed? A. I don't know the exact date of that.

Q. Before or after the election? [169] A. I think it was after the election.

Q. And John Lawrence you say recommended him? A. Correct.

Q. To whom did John Lawrence recommend him? A. I believe to the chef.

Q. Well, is this because the chef told you this? A. No.

K. King, for Employer, Re-cross.

Q. Well, how do you know it or . . . withdraw that. What's the basis for your belief? A. My basis for belief is that I know that John Lawrence was a friend of John Siskar's and I know that he recommended . . . that Lawrence recommended Siskar.

Q. Well, I'm not arguing with you, Mr. King, but were you present when Lawrence recommended Siskar to anybody? A. I don't recall whether I was present or not.

Q. If you were not present, how did you receive that information? That is, that Lawrence recommended . . . A. Most presumably I got it from Mrs. Lawrence.

Q. Who told you that John Lawrence recommended Siskar? A. Right. I don't know how it came about but I said . . . I went in the kitchen and saw this fellow working and I said, "Who's he?" Now Mrs. Lawrence said, "My son recommended him." That's the best recall I can give you.

[170] Mr. Lipsitz: I'm going to ask that that be struck because it's hearsay.

Hearing Officer: Well, I won't strike it as being hearsay. I'll take it for what its worth.

Q. (By Mr. Lipsitz) All right. The next one is . . . A. Duane Tingue, T-i-n-g-u-e.

Q. And when was Duane employed? A. After the election.

Q. And in what capacity? A. As dishwasher and pantry person.

Q. And who recommended him? A. He was recommended by Fleury Richmond.

Q. Who's that? A. A cook in the kitchen.

Q. And who told you that? A. I believe my assistant manager did.

Q. And did your assistant manager speak to Duane Tingue before he was hired? A. I don't know, sir.

K. King, for Employer, Re-cross.

Q. And the next name on the list? A. Philip Slominski.

Q. And when was he hired? A. He was hired the summer that we opened and he was recommended by Lucas Slominski, who's the maintenance man.

[171] Q. To what was Philip hired? A. Bus boy.

Q. And did anybody interview him? A. No, they did not.

Q. You're positive? A. Yes, I am.

Q. Well, who did he speak to when he came to work before he actually performed services? A. I had spoken to his father about his availability. I told his father what he had to wear and he came in and reported to work. But I did not speak directly to Philip.

Q. The next one is whom? A. Calvin Alstrake. This was after the election.

Q. Who recommended him? A. His brother, Douglas.

Q. And to whom did Douglas give the recommendation?

A. To me.

Q. And what did he say to you? A. He said, "My brother's home from college." We were looking for a bus boy and I said, "Do you think he'd be interested?" He said, "Yes. I'll give him a call." He called and told him what to wear and reported for duty.

Q. The next one . . . [172] A. Tom Tarnowski.

Q. And when was he hired? A. After the election.

Q. And he was hired by Mr. Addabbo? A. Yes, he was.

Q. Next one? A. Peter Jenkins.

Q. And he was recommended by whom? A. Nancy Witt-penn, W-i-t-t-p-e-n-n.

Q. And what was her job? A. Waitress.

Q. And who told you that she recommended him? A. Mr. Perrigo.

Q. And Mr. Perrigo interviewed this gentleman? A. Yes.

Q. Joan Palsik was okayed by Mr. Chieffo when you were ill? A. Correct.

K. King, for Employer, Re-cross.

Q. Mr. Perrigo, you believe, interviewed her? A. Yes.

Q. The next one is whom? A. Steven I-h-r-i-g.

Q. Was there a Shepard in between? A. Yes, Shepard was the same as Palsik.

Q. Interviewed while . . . I mean hired while you were [173] out? A. Right.

Q. And okayed by Chieffo and interviewed by Perrigo? A. Correct.

Q. By the way, since you weren't there, I take it this is the report that you got from these gentlemen? A. Yes, that's true.

Q. Either while you were convalescing or when you came back, in some fashion? A. Yes.

Q. And the life guard was hired when? A. Was hired at the close of the summer season.

Q. Which summer? A. '73, after the election.

Q. Yes, of course. Who recommended him? A. Roger Hasin recommended Steven I-h-r-i-g and Judy Schrecongost, S-c-h-r-e-c-o-n-g-o-s-t.

Q. And who spoke to him before he came to work? A. Mr. Killion talked to the life guard, to Mr. Hasin, about both of these employees. He did not speak to Steven or Judy before they started work.

Q. And they worked as life guards? A. She worked as a life guard in other areas, not at the Holiday Inn.

[174] Q. How long were they employed by the company? A. They were employed just a week or ten days.

Q. The next is Charles Thompson. A. Charles Thompson.

Q. He was hired as a New Year's Eve bartender? A. That would be before the election.

Q. For that one night? A. Right.

Q. The next one is a Dorothy Dudek? A. Yes.

Q. She was hired . . . A. Hired after the election.

Q. For what? A. For banquet waitress.

K. King, for Employer, Re-cross.

Q. And who interviewed her, if anybody? A. Mr. Killion, the assistant manager, talked to her on the telephone. And she recommended Shirley Beriteno and John Beriteno.

Q. Was this for a particular banquet? A. Yes.

Q. You were looking for extra help then? A. Yes.

Q. I'm not clear from this testimony that you gave and you understand I'm not trying to argue with you but I have two recollections about this notice that [175] Nichols had some role in. She had been telling you about the problem with waitresses coming in late, is that correct? A. Correct.

Q. And as a consequence, you suggested to her or instructed her to write a memo on it? A. I instructed her to draft a memo, yes.

Q. Which she did and submitted to you? A. Yes, she did.

Q. Did you tell her what to put in the memo? A. I did not tell her specifically what to put in the memo but I did revise the memo.

Q. But you had a discussion during the course of which she understood the subject matter to be covered? A. Right.

Q. And she wrote it and brought it to you? A. Yes.

Q. And you say you revised it? A. Yes.

Q. Can you tell us now what revisions you made? A. Just in structure is all. Word-by-word, I couldn't.

Q. Not content, but structure? A. Right.

[176] Q. You wanted it to appear in such a way that she had drafted it? A. Right.

* * *

[177] EXAMINATION:

Q. (By Hearing Officer) * *

[179] Q. To your knowledge, has Sandra Ann Nichols requested of waitresses that they work late in the lounge? A.

K. King, for Employer, Re-cross.

Yes, she has at my direction or in my absence, the direction of the assistant innkeeper.

Q. Did you ever authorize Mrs. Nichols to require waitresses to work late in the lounge? A. I told her of a specific need that we needed employees for this, not that they had to.

Q. Is it your testimony that you yourself terminated the employment of Lois Lopski? [180] A. Yes.

Q. She was terminated because of her tardiness? A. That's my recollection.

Q. Previous to the discharge of Lois Lopski, did you discuss Miss or Mrs. Lopski's tardiness with Mrs. Nichols? A. Yes, I did.

Q. Mrs. Nichols recommended firing of Lois Lopski? A. She did not recommend firing. She was disturbed due to the fact she could not get cooperation to cover the dining room during the breakfast hours.

Q. Did Mrs. Nichols make any suggestion as to what you should do as to Lois Lopski? A. She may have inferred something but that would be my decision.

Q. She may have inferred something. Do you recall whether, in fact, Mrs. Nichols did infer something? A. I don't recall, in fact, no.

Q. Who terminated the employment of Ann Perisi? A. I did.

Q. Do you know whether Mrs. Nicholas previously told Ann Perisi that she was fired? A. I know that Mrs. Nichols no longer told her she was on the schedule and asked Mrs. Perisi to see me.

[181] Q. At the Holiday Inn waitresses have particular stations including various specific tables to serve? A. Each shift has a station and we try to rotate the stations on a daily basis. They're not weekly assigned, sir.

K. King, for Employer, Re-cross.

Q. Who has authority to change waitress stations on a daily basis? A. I would, the assistant innkeeper and the hostess-cashier.

Q. Who does it most of the time? A. The hostess-cashier does.

Q. Would that be true of Sandra Ann Nichols when she worked there? A. Yes, it would be.

Q. This notice that was posted with respect to the tardiness amongst waitresses, you don't have that notice now? A. No, I'm sorry. I don't.

Q. Was the gist of it "Three unexcused tardinesses and you're out"? Was that the essence of it? A. It did mention being tardy three times.

Q. And then you're out? A. I don't recall "You're out." It was mentioned being tardy three times.

Q. Did you tell Mrs. Nichols that was the Holiday [182] Inn Policy, three instances of tardiness and then something might happen? A. Yes, I told her that three times being tardy we would have to . . . would have to take some action.

Q. And then did she, Mrs. Nichols put that in the notice? A. I don't recall. I assumed that we did.

Q. Employer's Exhibits which were admitted into evidence, 1 through 4, the banquet contracts or function sheets, these were all, I believe, dated in 1971? A. Yes, they are.

Q. Are they represented of . . . representative of what has been done since 1972 and 1973? A. Yes.

Q. On those particular exhibits 1 through 4, Employer's, are there names of waitresses shown thereon? A. Yes, there are.

Q. Who selects those waitresses names that are put on such banquet contracts? A. Myself, the hostess-cashier, the sales manager, and in some cases the chef plays a role in the girls that are going to be working these projects.

K. King, for Employer, Re-cross.

[184] Q. Mrs. Nichols was first employed at Holiday Inn as a waitress? A. Correct.

Q. Do you know approximately when she came on as a waitress? A. She came about a month after we were opened, about August of '71.

Q. Then subsequently, she became hostess-cashier? A. She suffered a fall and it was at the doctor's request she not go back to work in the capacity as a waitress and we hired her as a hostess-cashier.

Q. And when was that approximately? A. I don't recall the exact date on that. It seems to me around six months after she was in our employment but I can't be sure of the dates.

Q. In most of '72, was she a hostess-cashier? A. I believe she was.

Q. And all of '73 through mid-June? A. Correct.

Q. Does Nichols reprimand waitresses? A. Does she reprimand waitresses?

Q. Yes, or did she? A. It's the duty of every . . . Mrs. Nichols did and it's also the duty of every hostess-cashier to maintain order and a smooth running dining room.

[185] Q. Did she report to you disciplinary problems other than the matter of tardiness? A. Yes, she did.

Q. What were those? A. Sloppiness, service, customers getting cold food, not setting up the station properly, rudeness on the part of waitresses, rudeness on the part of the guest to a waitress.

Q. What, if anything did you do about instances of rudeness by waitresses toward a guest? My question was, in effect, what, if anything, did you do about instances of rudeness by a waitress toward a guest? A. I would discuss the matter with the waitress and also the hostess-cashier to see why the waitress was rude to the guest and whether she was provoked or whether there was a problem with the stationing or whatever the cause might have been.

L. Fitzpatrick, for Employer, Direct.

Q. Did you discipline the waitress in any of these instances? A. We'll try to correct the incident so it won't happen again.

Q. But did you reprimand the waitress or what? A. I would reprimand the waitress. We do in a constructive way so we can operate a more efficient dining room.

[186] Hearing Officer: I have no further questions.

Mr. Lipsitz: No.

Mr. Drenning: No.

Mr. Newsome: No.

Hearing Officer: Thank you very much.

* * *

[235] LEOLA FITZPATRICK was called as a witness by and on behalf of the Employer and, after having been first duly sworn, was examined and testified as follows:

Hearing Officer: Sit down, please. Give your name to the Court Reporter again.

The Witness: Leola Fitzpatrick.

[236] DIRECT EXAMINATION:

Q. (By Mr. Drenning) Mrs. Fitzpatrick, you're employed by Holiday Inn? A. Yes, I am.

Q. Did you open the Inn in question, the Inn at Dunkirk? A. Yes, I did.

Q. And when was that? A. July, I believe, of '71, July 16th.

Q. And you worked there for a time? A. Yes, I did.

Q. And how long was that, do you recall? A. I would say like five months, five or six months.

Q. And what were your duties while you were there? A. Well, I recruited help. I trained help. We cleaned rooms. I

L. Fitzpatrick, for Employer, Direct.

took inventory of supplies, put linen on shelves, and . . . an all around thing as you do when you open an Inn.

Q. Your general responsibility was to see to it that the rooms were clean? A. Yes, that we got the rooms in order after construction and we had maids that were just cleaning, [237] that were just cleaning women.

Q. Incidentally, you've been referred to variously as the Executive Housekeeper. Would you explain that title, please?

A. Yes. An Executive Housekeeper, you have to earn the credits to become an Executive Housekeeper.

Q. How does one do that? A. You have to have so many years as a housekeeper plus you have to go to college to gain the credits.

Q. Does that have anything to do with Holiday Inn or Federated? A. No.

Q. That's just a degree, if you will, that you have to achieve some status in the profession? A. Right.

Q. Did you, during your early going at the Inn, the period of five or however months it was when it was open . . . is that your best recollection, by the way, about five months? A. I was there before we opened.

Q. After the Inn was operating, let's say. A. I would say four to five months.

Q. Did you seek an assistant for your job? A. Yes, I did. I did after we got opened and we were working, not right away, Mr. Drenning. Because [238] you have to find out how the people work, who are the best workers, who do the best jobs.

Q. Did there come a time when you selected an assistant helper or housekeeper? A. Yes.

Q. And who was that. A. Ruth Hancock.

Q. Did she work with you for that period of time? A. Yes, for a long time. I couldn't say four weeks, five weeks, but quite awhile.

L. Fitzpatrick, for Employer, Direct.

Q. Would you explain the circumstances surrounding your having left the Inn after that five-month period? A. I was just told one day that I was to go to another Inn by the innkeeper.

Q. That was the innkeeper at the Dunkirk Holiday Inn?
A. Yes.

Q. What conversation did you have with Mrs. Hancock when you left? A. Just that I would be leaving and that I would keep in touch with her so that if she had any problems, she could tell them to me and I would try to help her out.

Q. What did you tell her with respect to her control of that housekeeping function or lack of control? [239] A. Well, she was still a trainee. She was not a housekeeper, per se. Because you have to be in this business quite awhile before you become, you know, a housekeeper.

Q. Did she consult with you in your absence by phone? A. Yes, quite often I would call practically every week. Sometimes more.

Q. What sort of things did you discuss when you phoned her? A. Well, linen, how to keep track of linen because she was having a problem with linen. She was, you know, having a problem with . . . see, she had . . . I'm getting ahead of my story, Mr. Drenning. But I trained two or three girls at the same time.

Q. In addition to Mrs. Hancock? A. Right.

Q. And who else was there? A. Kay Taddeo and Jean Ranier. They all did the same duties.

Q. They all acted as assistant housekeeper? A. Yes, but I, in turn, picked her over the two. But I made Kay Taddeo, along with Mrs. Hancock, to do the job that I had been doing.

Q. Did you have any discussion with Mrs. Hancock [240] at that time about the change in title? A. No, I did not.

Q. Was there any discussion as far as you know with Mrs. Hancock? A. None that I know of.

L. Fitzpatrick, for Employer, Direct.

Q. Is there any communication to her that she became something other than an assistant housekeeper? A. No.

Q. Did you return to the Inn from time-to-time? A. I made a couple of trips up, yes.

Q. And when were these trips? Do you recall? A. Well, the last one I do recall was November of last year. I know I made a couple others but I think September, but I can't, you know, remember.

Q. When you made those trips to Dunkirk, did you stay at the Inn for the period of your visit? A. Yes, I did.

Q. Did you talk with Mrs. Hancock about the innkeeping function? A. Yes.

Q. When did you return to the Holiday Inn, fulltime? A. February 21st of this year.

Q. Would you describe the circumstances of your recall to Dunkirk? [241] A. At my Inn, where I was housekeeper, the innkeeper said you're to go to Fredonia and to be there such a day.

Q. Did he explain why? A. No. Just said, "You're needed in Dunkirk-Fredonia."

Q. So sometime in February you reported to Dunkirk-Fredonia? A. Yes, Mr. King.

Q. And when you returned, what duties did you assume? A. Housekeeper.

Q. And how did you work with Mrs. Hancock? A. Well, she became my assistant.

Q. Was there anybody else at the time occupying additional assistant's job? A. No, there was not.

Q. Just you and Mrs. Hancock? A. Yes.

Q. You've been full-time employed or you've been employed since February at the Dunkirk Inn as the housekeeper? A. Yes.

Q. Would you describe your compensation, please? A. I don't understand.

L. Fitzpatrick, for Employer, Direct.

[242] Q. How are you paid? A. I'm salaried.

Q. And what do you receive? A. \$150 a week.

Q. What other compensation do you receive? A. I get major medical and I get room and board.

Q. Is major medical something in addition to what maids and other housekeepers get? A. It's given to innkeepers, chefs, assistant innkeepers and I don't know . . .

Q. Does any other employee in the housekeeping department receive room and board? A. Not that I know of. I could truthfully say, no. Not at this one. There are many Inns I haven't worked at, though.

Q. Do you know, of your own knowledge, how Mrs. Hancock is compensated? A. She gets a salary, \$80 a week.

Q. Does she receive the insurance you receive? A. No.

Q. Does she get room and board? A. No, she does not.

Q. Did her compensation change in the period of your absence? A. No.

[243] Q. Did it change in any fashion either by insurance or room and board? A. No.

Q. Would you describe the nature of your duties in the housekeeping function from the beginning of the day and, incidentally, would it help you if you had those sheets that you picked up from the front desk? A. Well, it could.

Mr. Drenning: Would you mark these, please?

(The documents above-referred to, were marked Employer's Exhibits 5, 6, 7, 8, 9 and 10 for identification.)

Mr. Drenning: Off the record.

Hearing Officer: Yes.

(Discussion off the record.)

Hearing Officer: Back on the record.

Q. (By Mr. Drenning) With reference to the exhibit

L. Fitzpatrick, for Employer, Direct.

marked Employer's 5, is that the first in a sequence, incidentally? A. These two come first.

Q. Would you describe what Exhibit 5 is? A. 5 is the night auditor's report and this tells what room was occupied, how many people and the price of the room.

Q. By reference to that, you know which room is to [244] be cleaned? A. Not entirely because a certain time during the night your machine is cut off and some of these blank spaces could have been filled in after 12:00 o'clock at night which would go on tomorrow's auditor report. It would be down at the bottom.

Q. Now, you picked this ... pick this up every morning? A. This I pick up from the front desk and this ... that's left there by the night auditor. This one I pick up at the front desk at the same time that it's made out by the desk clerk in the morning when she comes in.

Q. Now, you're referring to Exhibits 5 and 6 for identification? A. Right.

Q. Then what do you do? A. I go to the office. We have ten sections, five downstairs, five up that consist of 13 rooms and 14 rooms and each maid is given a section. She's assigned to that section and she keeps that section.

Q. When she's assigned is she assigned from the day of her employment? A. No. It just seems to fall ... how do I say this ... well, in the spring, now we didn't have 14 maids. [245] We have to have ten on during the busy season with four to pick up the day's off. So any maid comes in here to do that section. And in the beginning we had just the downstairs occupied, so we only have five maids with two to take up the days off.

Q. Well, after the maid ... A. As they come, you just fill in the section with them.

Q. We are at the point where the maid is assigned to her

L. Fitzpatrick, for Employer, Direct.

rooms. What next occurs? A. We put the assignment on this paper.

Q. By that, you're referring to Employer's Exhibit 10 for identification? A. Yes. One section would be from 101 to 125, odd numbers. Across the hall it would be from 102 to 126. And she's given the stencils of the room taken from this six here, just the way it is here, whether it's a stay-over, a "B" means stay-over that night. A check-out means they've already left and just a check means they are to leave.

Q. So now, if a maid is assigned to a given area, all that's done with respect to Employer's Exhibit 10 is to mark on that particular maid's sheet, the rooms used in her section? A. Right.

[246] Q. And she knows automatically to clean those rooms? A. Right.

Q. Then what occurs? A. Well, as we get check-outs, we put them . . . this is a blank sheet of paper when we start in the morning.

Q. Now, you're referring to Employer's Exhibit 7? A. 7. And we put the check-outs down and before the day is over, every room that was occupied here is written here. Now, you might have had a "B" here but it's now become a check-out over here because the people have decided to leave.

Q. And who makes the entries on Exhibit 7 for identification? A. I usually do. When I get the rooms from the front desk, I'll come and say 153 is a check-out, 255 is a check-out and I'll put it down plus when the maids come in then in the noon with their papers, I put a check mark by them to show that those rooms have been completed.

Q. Then what happens? A. Then right after 12:00, which is check-out time, I go around and take what we call a baggage report. We rap at every door. Now, there will be suitcases in there or the room will be a check-out that hasn't been called into us from the front desk because if you [247] have

L. Fitzpatrick, for Employer, Direct.

an advance payment which is an "AP", like on here, that means that people won't go to the check to check out. They've already paid and they'll just leave the room in the morning. So we take every room, rap at every door and write down the status of that room as at 12:00 o'clock, well, between 12:00 and 1:00.

Q. That information is summarized on Employer's Exhibit 8? A. Right.

Q. For identification. Okay. Then that is turned into the desk? A. That 8 . . . I see. This is turned into the desk at noon because this tells them what rooms they can rent.

Q. Very quickly, what's Employer's Exhibit 9 for identification? A. That's the last . . . when the maids finish the day, same procedure goes again, you go into every room, check every room, make sure what it is and turn that paper into the desk and they work with that.

Q. Now, what do you do when you're not attending to that paper work? A. I'm inspecting rooms. That's the job of housekeepers. That's the most important job of a housekeeper.

[248] Q. What kind of things are you looking for? A. Well, Holiday Inns of America require certain articles, certain amount of towels in a room, stationary, 8 sheets of writing paper, four envelopes, free cards, a fly swatter, two shoe shine cloths, a laundry bag, a map of the Inn itself, services of the Inn.

Q. In addition to inspecting, I take it, for whether the room is clean or not? A. Yes. The main purpose of a housekeeper is to make sure the rooms are clean and that the articles are in that room that should be there.

Q. So you have two things you're looking for, whether the proper items are there and whether or not the room is properly cleaned? A. Yes.

Q. And in the event the room is not properly cleaned, what do you do? A. I get the maid that did the room, I go get

L. Fitzpatrick, for Employer, Direct.

her and bring her back or lots of times I might write her a note and hand it to her because I want to get my inspection done so I can't turn the paper into the front desk at noon and I'll say, "I'll go back and check the room," which I go back and check the room. But if she's close by, I'll have her go [249] back in the room, show her where there's scum on the tile, she's left soap in the soap dish or hasn't taken the hair out of the sink, or she's got a ring around the tub.

Q. In the event not sufficient paper or whatever is not left in the room ... A. If I'm close enough, I'll put them in. If not, she'll have to come back and do it.

Q. What does Mrs. Hancock do relative to inspecting? A. She does ... she inspects also. She also makes up rooms.

Q. Do you ever make up a room? A. No, I do not.

Q. Do you ever engage in any cleaning activity? A. I have at times when it was absolutely necessary, but I don't do it as a general thing.

Q. What portion of Mrs. ... well, Mrs. Hancock, in addition to the cleaning she may engage in and in addition to the inspecting, what does she do to prepare the other maids with equipment and such? Would you describe that? A. Well, she'll see that they have their ... what's needed on their carts. She'll also, if something is wrong in a room, she'll tell me or I'll say to her, "Well, tell the girl to go back and do it", or [250] she has told the girl to go back and do it.

Q. How do the maids pick up their carts? A. They're put outside by the housemen in the morning.

Q. Outside of what, in the hallway, you mean? A. Yes.

Q. And how are the carts filled? A. The girls fill their own carts at night before they leave. They are given ten minutes to fill their carts.

Q. And is there any work by either you or Mrs. Hancock in the morning in connection with those carts? A. No.

L. Fitzpatrick, for Employer, Direct.

Q. Is there any work in connection with linens or towels?
A. Oh, yes. We have three days of laundry delivery. Ruth will fold towels. We count the linen coming in. We count the linen going out.

Q. And the folding process is taking the linens back from a commercial laundry and folding them? A. Yes. They come in folded one way and for us to fold them the way the Holiday Inn's requirements require them to be folded.

Q. Who does that? [251] A. The maids, the housemen, Ruth does it.

Q. Have you hired maids at the Inn, Mrs. Fitzpatrick? A. Yes, I have.

Q. On your authority? A. Yes, I have.

Q. Sometimes in consultation with the innkeeper? A. Many times I've said to him, "Would you please put an ad in the paper; we need maids."

Q. Have you likewise terminated maids? A. Yes, I have. I don't think I did this time but I did when I was opening.

Q. Doesn't Mrs. Hancock have the authority to hire? A. No, she does not.

Q. Does she recommend people for hiring? A. I don't know that she recommends people for hiring. We have people ... we'll say to one of the maids we already have, "Do you know of anybody that wants to work?"

Q. Has she hired anybody since February? A. No.

Q. Has she ... A. Or before February.

Q. What does she do before February, to your knowledge? A. She interviewed people and she's interviewed [252] people since with me but she's never hired.

Q. What's the custom when there's a maid to be hired; who interviews that candidate? A. Well, they can be interviewed by almost anyone really. The thing of it is, really, we show them a clean room, we show them a dirty room. We tell them in the dirty room what has to be done to look like the

L. Fitzpatrick, for Employer, Direct.

clean room. And you'll find people that will come in and apply for a job and the minute you show them they have to clean the toilet, they say, "I'm not going to clean the toilet." So you say, "Good bye" to them and out the door they go.

Q. Essentially it's disagreeable, you say? A. It's back-breaking work.

Q. Do you have trouble listing candidates for new employment? A. We get them but we don't keep them. We got a very good crew right now. But we've had them come and go.

Q. The interviewing process is to describe the work? A. Show them what has to be done.

Q. Emphasize possibly that it's a toilet that has to be cleaned? A. Yes.

Q. Gauge their reaction? [253] A. Right.

Q. What else is fulfilled in the interviewing process? A. Well, we usually ask them if they have transportation because, without the transportation they have no way of getting to the Holiday Inn, if they have a babysitting problem or what have you that would deter them from appearing as a steady maid.

Q. I take it you gauge the stamina to perform the task? A. Right. You're not going to hire a 67 year old to do 14 rooms a day. No way.

Q. Now, you indicated earlier that you had done that interviewing process since February. A. Yes, I have.

Q. Does Mrs. Hancock assist you from time-to-time? A. She's been with me.

Q. Does she discuss the candidate? A. Yes, because she knows a lot of people in that area.

Q. And why is that important to you? A. Well, first of all, you look at an application and most all applications are screened but they may not be screened before you hired this person.

L. Fitzpatrick, for Employer, Direct.

Q. She'll know if they have a reputation in the [254] community? A. Right.

Q. And she'll pass that on to you for whatever it's worth? A. Right.

Q. When a candidate is interviewed, do you introduce Mrs. Hancock as a supervisor? A. No, I introduce her as my assistant.

Q. Do you say anymore than that? A. No, I don't. Only that she would . . . we put a new girl with a maid that's already working there, a maid that we know is real good and keep her with her for two, possibly three days if we can. Many times we can't . . . the occupancy will go way up and we need somebody in every section.

Q. You indicated if a room was not cleaned to your satisfaction, except if it was extremely minor, you would call the maid back. A. Yes.

Q. What would Mrs. Hancock do if the room wasn't clean? A. Lots of times she'll clean it up herself.

Q. And she'll yank out whatever equipment is required and do it right? A. Yes. She has a uniform. She has pockets and [255] carries soap and matches and shoe shine clothes and she can put them in and she'll make up a bed. Like yesterday we were in a section with no one in it. So she went ahead and made up rooms.

Q. Except for showing a maid how to make up a bed, do you ever make up beds yourself? A. No, I never do. But I'll take a girl and show her what has to be done in a room the day she starts working.

Q. Does Mrs. Hancock spend part of her day vacuuming and dusting? A. Yes, in fact this week she cleaned up two fire rooms. We had a fire and so she scrubbed down the walls and . . . because if we had had a maid to do it, it would have taken them half a day to do it where she did it.

L. Fitzpatrick, for Employer, Direct.

Q. How many maids do you have employed? A. At this present moment, 11.

Q. And what's the normal spread from a low number of maids and exclude yourself and Mrs. Hancock, how many people do you have engaged . . . A. 11 maids and two housemen.

Q. What's the spread during the normal year at this Holiday Inn? A. I haven't been here in the dead of winter when it [256] gets very slow.

Q. But you have 11 now? A. 11 right now. We had 14 plus a night maid all summer.

Q. Is that considered high, 14? A. That's considered normal because we have 10 maids. We have ten sections, so we have 10 maids to take care of the ten sections and the days they're off, you have to have four to fill-in on the days off.

Q. On any given day the likelihood is only 10 maids will be working? A. Right.

Q. And is all the work you have to supervise as far as the 10 maids and no more than that? A. No.

Q. And during the busy season, if you swell to something in excess of 14, what would that be at this Holiday Inn, for example? A. Well, you wouldn't have a maid factor because all you need there to operate 136 rooms are 14 maids.

Q. That would be the maximum number? A. Yes.

Q. And of those, of that 14, all those people would be working that day? [257] A. Five days a week.

Q. And you'd have to have additional numbers to work for the day off periods? A. This is what these extra four do, Mr. Drenning.

Q. So you're talking about 10 maids working on any given day? A. But the four are to take the two days off that the maids have.

Q. I'm trying to focus on the number of personnel you

L. Fitzpatrick, for Employer, Direct.

have to supervise. A. The highest would be 14 maids plus a night maid and two housemen.

Q. 14 maids . . . but the 14 are not employed at any one day? A. No, 10 are.

Q. 10 maids? A. Right.

Q. Mrs. Hancock? A. Right.

Q. And how many housemen? A. Two.

Q. Okay. And that would be the maximum as far as you know? A. Right.

Q. Mrs. Hancock, if she discovered an item was [258] missing from a room, a piece of paper or whatever what would she do? A. If, like myself, if she was near . . . if a maid was near, she'd tell her to go put it in. If the maid was way down at the other end of the hall, it would be easier for her to put it in.

Q. Does Mrs. Hancock have the authority to fire anyone? A. No.

Q. Does she have the authority to discipline or reprimand anyone? A. No. She might say to her . . . when you use the word "discipline" or "reprimand", we don't use it in the respect that if she don't get all the scum off the tile there's going to be discipline. You just, as a matter of fact, tell them, "You did not get the soap film off the tile. It has to be taken off."

Q. Well, suppose you had an employee maid who consistently neglected in one area or another in cleaning. Would Mrs. Hancock fire her on Mrs. Hancock's own initiative? A. No. I'm sure she would come to me and when I'm not here, I'm sure she would go to Mr. King.

Q. When you're here, what does she do? [259] A. She tells me.

Q. And what do you do? A. I usually talk to the maid.

Q. Does Mrs. Hancock accompany you? A. Many times, many times. I've had maids help me inspect rooms also, Mr. Drenning.

L. Fitzpatrick, for Employer, Direct.

Q. I'm sorry. A. I've had, at times, maids help me inspect rooms.

Q. Is that when Mrs. Hancock's unavailable? A. Yes.

Q. Would a maid assist you in that inspection process if Mrs. Hancock were there? A. Not really, but, you know, I just think it's good training for a maid to know what to look for and what we do and why it has to be done and so forth.

Q. We have your testimony that, essentially, yours is an inspection job. Okay? A. It's every housekeeper's job to make sure the room is clean for the guests checking in.

Q. Now, with respect to Mrs. Hancock, she engaged in inspecting? A. Right.

Q. She engages in actual cleaning? A. Yes.

Q. I think you suggested she works with inventory? [260] A. Yes.

Q. Is there another main category of her work? A. Well, she helps with the laundry.

Q. Could you break that down in what portion of her day she devotes to each? A. Well, we get laundry in.

Q. Let's say in percentage or hour terms, whatever you're more comfortable with. What portion of the day would she spend inspecting? A. She is out all morning inspecting.

Q. So most of the morning she's inspecting? A. Right.

Q. Now, before the rooms are actually cleaned, she has to be doing something. A. Many times she does this work.

Q. She helps you with the paperwork? A. Yes.

Q. Does she load carts, fold sheets, whatever? A. She does lots of folding.

Q. Do you fold any sheets? A. I have.

Q. How often do you do that? A. Not often. I'll sit and count wash clothes. The house boys usually carry the linen upstairs and I'll help count wash clothes or pillow cases if we [261] are short and the girls haven't had any to put in the

L. Fitzpatrick, for Employer, Direct.

rooms, we'll do it in a hurry. Many days the maids get through early and we have an awful lot of linen to fold and we'll give the maids an extra half hour pay to stay. They enjoy this to get extra hours to fold linen.

Q. Do you give instructions directly to other people in the housekeeping department? A. Yes.

Q. Maids and others? A. Yes, I do.

Q. Do you issue those orders through Mrs. Hancock? A. No. I have, you know, said to her, "Please call . . . please go up and call Mary that I want blankets and spreads changed on X number of rooms," which she'll go up and relay the message.

Q. Do you give instructions or orders to Mrs. Hancock in the company of other maids? A. Yes.

Q. What sort of instructions? A. Well, I'll say I want such and such a thing done. The maids are sitting there, might be coffee break, lunch time. If they're around, I'm sure there's a maid to testify to that.

Q. Do you know of your own knowledge the circumstances [262] surrounding the departure of the other person in the housekeeping department with which Mrs. Hancock had a disagreement? A. I only know when I was up here in November I knew there was something just not right because there was an awful lot of gossip, I'll say, and I went to Mr. King at that time and said, the . . .

Q. This is November of 1972? A. Yes. I said, "There's something going on here."

Q. Was there any thought to have you replace anyone in the housekeeping department at that point? A. Not that I know of. But I did alert Mr. King there was some undercurrent there and that there was things that weren't just kosher as they should be.

Mr. Drenning: I have no more questions.

L. Fitzpatrick, for Employer, Cross.

Hearing Officer: Let me ask you, Mr. Drenning, about the exhibits.

Mr. Drenning: I'd like to offer those, if there's no objection.

Mr. Lipsitz: No objection.

Hearing Officer: There being no objection, they are received.

(The documents above-referred to, heretofore marked Employer's Exhibits 5 through 10, were received in evidence.)

[263] Mr. Drenning: I have no more questions.

Mr. Lipsitz: I'm waiting for Mr. Newsome. Mr. Newsome, did Mrs. Fitzpatrick make a statement to the Board?

Mr. Newsome: No, she did not.

CROSS EXAMINATION:

Q. (By Mr. Lipsitz) Mrs. Fitzpatrick, from what institution do you have a degree? A. I have no actual degree.

Q. I don't mean to embarrass you in any way. I thought you said you were an Executive ... A. You have to get so many credits, I said.

Q. From where? A. And so many years. Well, the National Executive Housekeeping Association sets up a program.

Q. I see. A. And you have to have so many years experience plus so many credits and it goes by degrees. I lack three to become a certified Executive Housekeeper.

Q. I understand. Now, how long have you been employed by Federated? A. Going on four years. Four years February.

Q. And you, during those four years, how many different Federated Inns have you worked at? A. I've worked in three and opened two.

L. Fitzpatrick, for Employer, Cross.

[264] Q. You know how long you're going to be assigned here? A. I do not.

Q. You don't expect this would be a permanent assignment? A. I have no idea.

Q. You've never had a permanent assignment as a housekeeper yet with Federated, have you? A. Well, I was a year and nine months at one Inn.

Q. Are there other Executive Housekeepers employed by Federated? A. I'm not an Executive Housekeeper.

Q. A person who's equivalent of an Executive Housekeeper? A. I don't know. I can't answer that question.

Q. When Ruth Hancock was employed as a maid, you looked at a number of. . .or three, I think you mentioned. A. Yes, I did.

Q. Taddeo, Ranier and Hancock. A. Right.

Q. Observed their performance of their duties? A. Right.

Q. With what goal in mind? A. To be able to do inspections, to be able to do [265] inventories, to be able to know what material is needed, how to make out the papers.

Q. Those are part of your responsibilities as the Head Housekeeper? A. Yes. I'm not the Head. I'm just the Housekeeper.

Q. All right. Housekeeper. And I'm not trying to suggest that you're not a hard worker, you evidently are. I take it though these duties altogether are more than one person can handle and still do the job properly? A. Many Inns have only one Housekeeper.

Q. Well, is that because of the size of the Inn? A. Yes.

Q. Is this a larger one. . . A. There's 220 Inns this company owns.

Q. I don't have any idea if it's small or large. A. They usually don't have two housekeepers.

Q. Well, but you were looking for somebody to assist you in your duties, is that right? A. Right.

L. Fitzpatrick, for Employer, Cross.

Q. And is that because of the size of this Inn? A. Yes, because of it being an indoor Inn mostly. Because you have corridors, you have. . .

Q. So there was more work to do than other Inns in which there is only the one housekeeper and not an [266] assistant?

A. Right.

Q. Now, there came a time in 1972, in January or late in 1971, we're not certain which, maybe you can tell us, when you left. A. Yes. I don't remember just what day I left or anything. I know I arrived here a good month and a half before the Inn opened because we planned to open earlier than we did.

Q. And you stayed about five or six months? A. I stayed about five months.

Q. It's probably not that important but did you leave before or after Christmas? A. Before Christmas.

Q. So you left at the latter part of '71 in other words? A. Right.

Q. Now, at the time you had left, you selected Ruth Hancock as your assistant, is that correct? A. And Kay Taddeo, there were two.

Q. And. . . A. I trained both of them at the same time.

Q. At. when you left, what was the situation with regard to the responsibility for running the housekeeping activities the day after you left? [267] A. Well, they both were responsible. They both were responsible but they both did the same jobs. The two days Ruth wasn't here, Kay Taddeo did the job.

Q. Were they both paid the same? A. No, I don't believe they were. I believe Ruth. . . I mean Kay Taddeo was paid a maid's wage.

Q. And Ruth was paid more money? A. She was put on salary. It doesn't amount to that much more.

Q. All right. How were you informed by the way, that you

L. Fitzpatrick, for Employer, Cross.

were going to leave the Dunkirk Inn? A. When I work in an Inn, I'm responsible to that innkeeper. He's my boss at that Inn. He gets his orders from Mr. Douglas.

Q. Who's that? A. He's Vice-President in charge of operations.

Q. This is in College Park some place? A. State Park.

Q. Mr. King conveyed to you some information before Christmas of 1971 that you were leaving? A. Right.

Q. Did he tell you where you were going? A. He told me I was to be in Williamsport on a certain day.

Q. And at that time had you, without regard to [268] how completely, nevertheless provided for a succession for responsibility, mainly Hancock and Taddeo? A. They both had been trained to do everything that had been taught them.

Q. So your goal. . . withdraw that. So that at the time you left, whether they were going to do the job as adequately as you or not, there were two people that were going to perform this work? A. Right.

Q. One was placed on salary and the other remained on hourly wages? A. Right.

Q. Was there a reason why Hancock was placed on salary, if you know? A. Well, Kay Taddeo would be working her two days off, Ruth would be doing the job five days a week.

Q. In other words Ruth would be. . . Hancock, during her regular schedule, would be doing, and maybe not as well, but what you were doing? A. Not entirely everything I did. She didn't open an Inn.

Q. But in the operations of it, she would be doing what you were doing? A. More or less.

Q. Pretty much more, wouldn't it be? What less [269] would she be doing than you other than opening the Inn? A. Well, I had opened the Inn.

Q. I say other than opening the Inn, in the operation of it.

L. Fitzpatrick, for Employer, Cross.

A. She was picking up the paper from the front desk that the front desk clerk gave her. She made out the maid's paper. . .

Q. I want you to tell me the less that she was doing other than opening the Inn, not the more, the less. A. Well, she didn't do any of the purchasing.

Q. Who did the purchasing? A. Mr. King.

Q. Who did it when you were there? A. I did.

Q. So he took over the purchasing, assumed the purchasing? A. She didn't hire anyone.

Q. Go ahead. A. And she didn't fire anyone.

Q. All right. What else? A. I don't really know.

Q. That's the best recollection you have? A. Yes.

[270] Q. Now, were there. . . now, you didn't return until February of '73? A. I had come up here.

Q. Excuse me, on a permanent basis or presently permanent basis, you didn't return until February of '73, right? A. Right.

Q. Was there any turnover in the housekeeping department between December of '71 and February, '73? A. Yes. But there's a turnover every day in every Inn in housekeeping.

Q. And who interviewed the people to be hired, if you know? A. That were here when I got here?

Q. No. That were hired as a result of the turnover in the intervening 13 month period. A. Mr. King hired them as far as I know.

Q. I didn't ask you who hired them. Who interviewed them? A. Mrs. Hancock.

Q. And what was the purpose of an interview by Mrs. Hancock? A. To find out if the maid wanted to work. This is a hard, hard job.

Q. Somebody had to figure out and make. . . and decide [271] whether a particular candidate was worthwhile being

L. Fitzpatrick, for Employer, Cross.

interested in it, right? A. First of all when you talk to a candidate, when you recruit a candidate, you take them into a dirty room. There could be two beds, potato chips all over the floor.

Q. Other things you don't have to mention; I've been in motels. A. Now, if you got a candidate and they might take one look at that room and say, "Forget it."

Q. So interviewing. . . A. Is finding out whether or not the person wants to do the job that's required of them.

Q. And it's very important before you take somebody on in that particular kind of work. . . A. So if she talked to somebody and they weren't to this point of wanting to do this, she didn't even bother Mr. King.

Q. And so she made some value judgment before she would turn a person over to King for determination to hire them, is that right? A. Right.

Q. In other words she would. . .the fact that she was willing to have the person go in and see King was the. . .meant she was willing to have this person employed [272] in the housekeeping department? A. And we make lots of mistakes, too.

Q. Do you and she make. . . A. We both do.

Q. But she was, at that point in time, recommending for further interview leading really to hire, is that right? A. Right.

Q. And that was. . .she did that during this 13-month period? A. Right.

Q. On the two days she wasn't working, whatever functions there were that she had to perform, were taken over by Kay Taddeo, is that right? A. But there was three during the time I was gone.

Q. Three other Kay Taddeos? A. No. There was Kay Taddeo. . .

L. Fitzpatrick, for Employer, Cross.

Q. A total of three people, Hancock, Taddeo and one other? A. No, there were three people that took over. Kay Taddeo left. Jean Ranier came and left. Then Doris Belack left.

Q. But at that time only one of those persons. . . A. Right.

Q. Now, again, while you were away, who was responsible [273] for training the new maids? A. Let me explain one thing to you. When you hire a new girl, you put them with a good maid that you already have working for you.

Q. I see. A. You leave them with two to three days or as long as you can. And then you put them on their own.

Q. Okay. Well, did Hancock have responsibility during this 13-month period to observe whether or not the new maid was making out? A. Let me explain. The maid would be the first one to tell you whether or not she can do the work.

Q. But who did that maid tell it to? A. Probably to Ruth.

Q. Didn't go to Mr. King and tell him? A. No.

Q. So Ruth was responsible. . . A. Not responsible. You can't use the word "responsible."

Q. Well then you tell me what word you can use to see to it that the new candidate should be retained. A. The maid would say to Ruth, "This is a good maid. She's really doing a good job. She's going to be a good maid." She says to Ruth, "This maid isn't going [274] to be good," but it didn't matter because they needed help. You keep them whether they're good or they're bad, you keep them if you need them.

Q. Who got the grief if something went wrong while you were away during this 13-month period? A. Mr. King got the grief.

Q. Who got the grief under him? A. I would believe Ruth.

Q. In the housekeeping department? A. I would believe Ruth would probably get the grief. If you call it grief.

L. Fitzpatrick, for Employer, Cross.

Q. Well, if some guest complained that when he went into his room, it was in a deplorable state. A. It would go to the front desk.

Q. To whom would it come back for responsibility? A. It would go from the front desk to Mr. King who's the innkeeper who's responsible for the Inn. He would go down to the maid.

Q. He wouldn't go to Ruth Hancock? A. He probably would pick Ruth up and take her with him.

Q. He didn't look at Ruth as to whether or not the maids were doing their job properly or not? A. I believe he would go to the maid.

Q. You don't know though, do you? [275] A. I don't know whether he'd go to Ruth or not.

Hearing Officer: Mr. Lipsitz, does this all go to point in time when Mrs. Fitzpatrick was not there?

Mr. Lipsitz: That's what I'm asking here.

Hearing Officer: Well, let's get through with this part in rather a hurry because it's somewhat rather conjectural as to what went on when she wasn't there.

Mr. Lipsitz: She was in and out and had consultation by telephone.

Hearing Officer: But she wasn't there. Go ahead.

Q. (By Mr. Lipsitz) Now, you said you were in telephone communication with her on a weekly basis or sometimes more frequently? A. Yes, I was.

Q. Who initiated the calls? A. They were charged to management.

Q. Did you call her? A. I would call her.

Q. To find out what was going on? A. Yes, I would call her.

Q. You didn't call Kay Taddeo? A. Well, it would be

L. Fitzpatrick, for Employer, Cross.

Ruth that I would talk to. If [276] Kay Taddeo was there the day I called, I would talk to Kay.

Q. Who did you call for? A. Housekeeping is the way I put it.

Q. You just said, "Operator, I want to speak to the Housekeeping Department"? A. Right.

Q. Never asked for Ruth Hancock? A. Not always.

Q. Did you sometimes ask for Ruth Hancock? A. Sometimes I did.

Q. Did you ask for Jennie Jones, a maid? A. No, because I didn't talk to the maids.

Q. On these trips that you returned before February of '73, how long a duration were they? A. A couple of days only.

Q. Now, it was one of those in November of '72 that you made whatever observation you made and reported to King that something was going on that. . . A. I didn't understand. I had a feeling that well, something wasn't right.

Q. Did you make a recommendation? A. I didn't know what it was.

Q. Well, what was the consequence of your talking? A. It was truthfully gossip.

[277] Q. Nevertheless, as a result of your reporting this to him, what took place? A. Nothing took place at that time.

Q. Wasn't until three months thereafter that you were notified you were returning? A. Right.

Q. Now, when you returned, did you address the maids and the two boys as a group and explain the change that had taken place? A. I had a maids meeting. I certainly did.

Q. And what did you tell them? A. I just told them I was back here as a housekeeper and that I was going to try to straighten things out, whatever had taken place. I still was not. . . didn't know the details. I cared less about the details, just wanted a smooth operation.

L. Fitzpatrick, for Employer, Cross.

Q. And what did you tell them, if anything, about Hancock's position? A. I didn't really say anything. I said I was the housekeeper.

Q. Did you say anything about Hancock? A. No, I didn't.

Q. All right. A. I come back to take over the housekeeping.

Q. What changes took place in Hancock's job when you [278] came back? A. She was more or less demoted.

Q. Well. . . A. Demoted to. . .

Q. Did you tell anybody she was demoted? A. No, I did not.

Q. Instead of characterizing it, just tell me the changes that took place. What did she do now that. . . A. She still practically did the same things.

Q. Well, "practically" means not absolutely but mostly. A. She still picks up the paper at the desk, and she still makes out the maids papers some days. She still inspects rooms. She still helps me with baggage reports which we. . .and the other assistants there were doing the same things.

Q. Then forgetting. . . A. I did all the ordering.

Q. But she wasn't doing all the ordering anyway. A. No.

Q. So I want to know what changes took place in the performance of her duties. . . A. No real change.

Q. All right. So that's the answer is she's doing essentially what she was doing during this 13-month [279] period? A. Right, and before I left the same thing.

Q. You mean to say that before you left, she interviewed people for hire? A. She was interviewing with me at that time.

Q. But when you left, she was interviewing by herself? A. But she wasn't hiring.

Q. I didn't ask you that question. A. But she interviewed with me.

Q. And when you were gone, you weren't there to inter-

L. Fitzpatrick, for Employer, Cross.

view with her? A. But when I was there, she interviewed with me because she knew the people of the town.

Q. When you selected her as one of the persons you were looking for, she didn't interview when she first started out as a maid. A. Let me explain that to you. We had an ad in the paper before we ever opened the Inn. And had applicants apply to unemployment. . . wouldn't that be unemployment, Mr. . . .

Hearing Officer: Just testify, don't ask questions.

The Witness: Where we had something like. . . I don't know how many applications before we ever opened [280] the Inn. And a lot of those applications were screened and we got down to the amount of people we needed and the best people we thought we were trying.

Q. (By Mr. Lipsitz) All right. Now my question is she was hired as a maid, wasn't she? A. Right.

Q. And she remained as a maid until some point in time when you, looking at her performance, said, "That's a person I think we can help be something a little more than a maid," and subsequently you hired her. . . . A. Yes.

Q. But when you left, she continued to perform, among other duties, interviewing applicants for employment? A. Right.

Q. And you weren't there to do it with her? A. No, I wasn't.

Q. Upon your return from the time of the election, how many beds per day did she make? A. Oh, quite a few.

Q. As many as the other maids? A. No. She wouldn't pick up a section unless we were short of maids.

Q. All right. Well, we'll come back to that. A. But if a maid had 14 rooms, she had gone in and [281] made beds, scrubbed bathroom tiles to get them done.

L. Fitzpatrick, for Employer, Cross.

Q. And how many hours per day on an average did she do that kind of work as contrasted with the inspecting work and going to the front desk? A. I'd say three-quarters of her work.

Q. What? A. That she was doing maid work.

Q. In other words she was doing three-quarters of her ten rooms per day, is that what you're telling me? A. First of all, let me say there's more than just to do a room. You can go in, we have bathtub strips which get very dirty. A maid will wipe them but she'll not take the time to scrub them each and every time. When Ruth will take a section, she'll do this. Or Ruth would take a section and do tile.

Q. All right. Let's go back to February 21st. On February 22nd, if that was a work day, tell me the number of rooms she made up? A. I can't tell you.

Q. On February 23rd? A. I couldn't tell you.

Q. February 24th? A. I couldn't tell you any one specific day.

Q. Yesterday? [282] A. Yesterday, she did one. . . 125, 123. . . she made beds in three of Jackie's rooms upstairs. I would guarantee to say. . .

Q. And that took her three-quarters of the day? A. I'm not saying that she just did a room. She hops all over and does rooms. She'll make beds for each and every girl.

Q. How much time does she spend inspecting? A. Well, she spends, I'll say, from like 10:30 to 11:30 in the morning inspecting. And I would say when she's doing the baggage report with me, she spends like three-quarters of an hour as we go in rooms inspecting and at the end of the day she spends a half to three-quarters of an hour inspecting.

Q. Well, you have now given me what's approximately two and a half to three hours. A. Well, you want one hour, two hours. . . I'm just saying. . .

Q. I don't want anything. I'm asking questions. Would

L. Fitzpatrick, for Employer, Cross.

you say it's actually fair to say she spends at least two and a half to three hours a day doing the kind of work which you described as inspecting, baggage reports and other similar. . . A. I'll agree to that.

Q. She also sits with you and counts out linens, [283] isn't that right, or wash cloths, I think you said. A. No, you misunderstand. I said I counted the wash cloths. I said we get a laundry delivery three times a week.

Q. You and she fold sheets together? A. I said I usually count the wash cloths.

Q. But you and she fold sheets? A. No, the housemen fold sheets.

Q. I'm sure you testified that you. . . A. I don't think I said that.

Q. Does she fold sheets? A. We fold towels. . .

Q. Whose "we"? A. Housemen.

Q. How about you? A. I count the wash cloths usually because the girls are waiting for them, pillow cases they're waiting for.

Q. Didn't you testify that all morning long she helps you with paperwork and inspecting? A. I said that's one of the things she does. I don't know whether or not I said "all morning long."

Q. You said you've issued orders through Hancock. A. Yes, I have.

Q. What kind of orders? [284] A. To tell the maids to change the blankets and spreads, move her beds.

Q. This is as a result of an inspection? A. Right.

Q. Is it your testimony that Hancock has never told a maid to do this without first hearing it from you? A. I'm sure she has because the purpose of the Inn is to have a clean Inn. And the maids know this is the purpose. This is what they're hired for, is to clean a room.

L. Fitzpatrick, for Employer, Cross.

Q. Sometimes the maids don't do it correctly, isn't that right? A. But they're supposed to do it correctly.

Q. Sometimes they don't do things correctly, is that right? A. Right.

Q. And either you, if you observe it, or she observes it, will correct what was done incorrectly? A. Yes.

Q. Not just you issuing orders to her, she does it on her own as part of her job? A. It's part of a maid's job also.

Q. I'm talking about the maid that doesn't do it incorrectly. Her job is to do it correctly but [285] she doesn't always do it correctly, according to your testimony. A. No, she doesn't.

Q. And then it becomes somebody else's job to see that it's done correctly? A. Right.

Q. And that somebody else is Mrs. Fitzpatrick and it's also Ruth Hancock, is it not? A. Right.

Q. Some other maid coming down the hall isn't going to pop into one of the sections and say to Mary Jones. . . A. Yes, she would.

Q. When did she thus do it? Would you tell me when the last time another maid went into another maid's area and directly told her what to do and tell me the basis of your testimony, whether you were present or not. A. All right. Two days ago I had a maid and she's in this room today, that told another maid.

Q. In your presence? A. That she wasn't making the beds right.

Q. In your presence? A. She was straightening out beds.

Q. In your presence? [286] A. She came down and told me.

Q. I'm asking you in your presence what you have direct knowledge of when one maid's corrected another maid. A. You asked me if a maid ever did this. I'm saying not in my presence.

L. Fitzpatrick, for Employer, Cross.

Q. So you don't know of any that were done in your presence? A. No. But your first question was. . .

Q. You don't know of any such incident that occurred in your presence? A. Now, if you put it that way, I don't.

* * *

[287] CROSS EXAMINATION:

Q. (By Mr. Newsome) Mrs. Fitzpatrick, during the inspection of the rooms, you and Mrs. Hancock performed this task jointly at some point. Are the rooms divided equally among you or who decides which. . . A. Many times she'll do the upstairs and I'll do it down or we'll reverse it or we'll take a certain section. I'll say, "You go down and do that section. [288] I'll do this one." That's the way we do it.

Q. You're both doing the same thing but in different sections? A. Right.

Q. Now, if Mrs. Hancock ran into a disciplinary problem, does she report that to you or to anyone? A. Yes, she does.

Q. She reports it to you? A. Yes. She'll usually say. . . well, I don't know how to explain this. She wouldn't really give the maid. . . you know, she'd just come down and tell me, "The maid isn't doing the outside of her toilets. The outside of her toilets are very bad." I would go up and tell this maid, "You have to clean these toilets."

Q. Is that part of her function, to report this type of improper thing to you? A. Yes, she has also told the maids herself.

Q. When she tells this to the maid, is this considered any form of admonishment or warning? A. No, it's not.

Q. Is it a corrective measure, if anything? A. Right. A room has to be done to a certain way at the Holiday Inn of America's expectations. We are inspected every three months.

[289] Q. All right. Mrs. Fitzpatrick, is it correct that Mrs.

L. Fitzpatrick, for Employer, Cross.

Hancock interviewed approximately 50% of the maids? A. Before I got here? Or since I got here?

Q. Well, let's take it both ways, since you put it that way. A. I've done most of the interviewing since I arrived here but she has been in with me on a lot of interviews.

Q. Would it be close to 50%? A. I wouldn't think that.

Q. What percentage would you estimate? A. Since I got there?

Q. Yes. A. Gee, I really don't know. I can't answer that question.

Q. But you would say it's a lot, using your words? A. I've done most of the interviewing since I got here. And she has sat in with me many times.

Q. Now, in your absence, does the innkeeper look to Mrs. Hancock for the responsibility of the proper cleaning and the making up of the rooms? There's no one else to look to? A. Well, first of all, let me just. . .

Q. I don't want you to explain it. [290] A. May I just tell you something? The innkeeper and the assistant inspect rooms also. All right. Now, so they all inspect. And I think Ruth, he would say more or less, you know, give her the responsibility as, you say, for the clean rooms but they're all inspecting.

Q. Now, notwithstanding that, but they would look to her for that responsibility because she's going around inspecting the rooms, this is part of her job? A. Right.

Q. Okay. And on these meetings you attend and Mrs. Hancock as well? A. What?

Q. When the innkeeper conducts meetings. A. Right, right.

Q. And the purpose of these meetings is to review the work of the Inn? A. And find out what rooms are going to be occupied and what rooms we have to. . .

Q. Now, if a maid is out sick, she calls you? A. She has to call in before 9:00 o'clock.

L. Fitzpatrick, for Employer, Cross.

Q. She may call you? A. Right.

Q. Does she also call Mrs. Hancock? [291] A. And she also calls the front desk many times.

Q. You're not answering my question. If you answer my question, we'll get through much quicker. She also calls Mrs. Hancock? A. Yes.

Q. Now, when you returned, it was as a resu' of that there was difficulty in the housekeeping department, is that correct? A. I wasn't told anything until I arrived here.

Q. But did you, at some point, did you come to understand that it was some difficulty in the housekeeping department and you were to straighten it up? A. Right.

Q. Now, was part of that difficulty the employees' dissatisfaction with Mrs. Hancock, the inspection of her work? A. No, I don't think that was the difficulty.

Q. All right. Now, did you call a meeting of the employees when you returned? A. Yes, I did.

Q. Did you instruct the employees to never go to the front office with their problem, to see Mrs. Hancock first? A. No, I said, "See me first." I didn't want [292] anybody going over my head to Mr. King.

Q. You said to see you first. Did you also tell them to see Mrs. Hancock? A. The maids had always went to Mr. King.

Q. Mrs. Hancock I'm asking you. I'm asking you did you tell. . . A. I don't believe I said that.

Q. You don't believe but. . . A. I cannot recall saying that.

Q. But you may have but you don't recall? A. I don't recall saying that.

Q. All right. Calling your attention to about the middle of May, do you recall having a conversation with a Dorothy K. Solinski in a room at the Inn? A. I talked to Dorothy many times.

L. Fitzpatrick, for Employer, Cross.

Q. I'm trying to pinpoint it down so we don't get mixed up, Mrs. Fitzpatrick. Do you recall having a conversation with her about the middle of May? If you don't, I'll try to proceed further? A. I don't.

Q. Do you recall making a statement to Mrs. Fitzpatrick, in about. . . I beg your pardon. . . to Mrs. Solinski in the middle of May somewhere wherein you told her or words to the effect that Mrs. Hancock was not to hire or fire employees anymore, that you'll [293] be doing that from then on? A. No, I never said that. I'll tell you that right now, I never said that. I never made that statement.

Q. Now, does Mrs. Hancock receive any benefits? I believe you testified you said she did not receive major medical and other benefits you receive? A. Right.

Q. Does Mrs. Hancock receive any benefits that the rank and file. . . does Mrs. Hancock receive any benefits that the maids do not receive? A. No, she does not.

Q. Do the maids punch a time clock by the way? A. They sign in and out.

Q. Does Mrs. Hancock sign in and out? A. Yes, she does.

Q. She signs in on the same sheet? A. Yes, bottom of the sheet.

Q. But she's not paid overtime? A. No.

Q. The maids are? A. Yes.

Q. Does Mrs. Hancock have any privileges that the maids do not have? A. In what way do you mean privileges?

[294] Q. Well. . . A. I don't understand what that question is.

Q. Well, privileges such as, for one, does she have a special place to eat, special facilities, not being penalized for being late for work or to go home early, and anything like that, any privilege that the rank and file maid do not have? A. I don't know of any. She's usually there before the maids get

L. Fitzpatrick, for Employer, Cross.

there and she's usually there after the maids leave. She hardly ever eats lunch. If she does, it's . . . she's a Pepsi Cola drinker.

Q. Do the maids have a regular time to eat lunch? A. Yes.

Q. Does Mrs. Hancock have a regular time to eat lunch?

A. She could have. It's her privilege to eat whenever she wants to eat. The same time as the maids is what I'm saying. But she doesn't usually eat lunch. But the lunch period is from 11:30 to ten after 12:00. Now, she won't eat at 2:30 or 3:00 o'clock, she would eat in that time. . .

Q. Do the maids have an order of going to lunch? You have a long range there. What was that lunch period? A. 11:30 to ten after 12:00.

[295] Mr. Newsome: I have nothing further.

Hearing Officer: Mr. Drenning?

Mr. Drenning: Nothing further.

Hearing Officer: Anything further?

Mr. Lipsitz: No.

EXAMINATION:

Q. (By the Hearing Officer) Mrs. Fitzpatrick, you were present at the Inn for its opening. You worked there a number of months and then you were absent for how long, for 13 months, approximately? A. Around that.

Q. And was it during that 13-months or some period that you would make phone calls practically every week to the Holiday Inn at Fredonia? A. Yes.

Q. And you talked mostly to whom, Mrs. Hancock? A. I usually asked for the housekeeping department and she would usually answer.

Q. And you talked to her about housekeeping department problems? A. Yes.

Q. Did you discuss at that time interviews of particular

L. Fitzpatrick, for Employer, Cross.

employees or applicants for employment that she had engaged in in your absence? A. Not that I can remember. I could have, sir.

[296] Q. You talked about linen? A. I talked about linen counts because we, you know, we always have a problem.

Q. What other matters? A. Of drapes and about ordering lamp shades and about bedspreads, about, you know, she would say, "I've been taking some bedspreads," or something. It would be just little things connected.

Q. Did she tell you that she was doing interviewing? During the course of these conversations, she refer to any interviewing? A. I cannot remember that, sir. I really can't.

Hearing Officer: All right. I have nothing further.

Mr. Newsome: You raised one question that came to my mind, your Honor, if I may.

CROSS EXAMINATION (Cont'd.):

Q. (By Mr. Newsome) When maids are hired, who do they report to? When they come into work, who do they report to? When you're there, they report to you, I assume. A. Yes, and when I wasn't there, they would come in and report to Ruth, I believe.

Q. Mrs. Hancock? A. Yes.

[297] Mr. Newsome: That's all I have.

Hearing Officer: Anything further?

Mr. Drenning: Nothing further.

Hearing Officer: Okay, thank you very much.

* * *

R. A. Hancock, for Employer, Direct.

**[298] Excerpts from Stenographic Transcript of
Testimony at Hearing, September 20, 1973.**

* * *

[307] RUTH ALICE HANCOCK [308] was called as a witness by and on behalf of the Employer and, after being first duly sworn, was examined and testified as follows:

Hearing Officer: Give your name to the Court Reporter.

The Witness: Ruth Hancock.

DIRECT EXAMINATION:

Q. (By Mr. Drenning) Mrs. Hancock, are you employed at the Dunkirk-Holiday Inn? A. Yes, sir.

Q. How long have you been employed there? A. Since June 29th, 1971.

Q. What was your job when you were hired? A. I was hired as a cleaning lady, cleaning the building before it was completed for occupancy.

Q. Did you work with Mrs. . . . I'm sorry, Mrs. Fitzpatrick, at that time? A. I worked as cleaning lady and after that was over and the rooms were rented out, I became a maid.

Q. Was Mrs. Fitzpatrick employed during this period of time? A. Yes, she was.

Q. What was her job at that time? A. Well, at the time, in June 29th she hired us . . . or we went to the unemployment office first to find a [309] job, and she greeted us the morning we went in and we worked under her supervision to clean the place, and from then on as the place was rented out, as each room was rented, she automatically became our housekeeper.

Q. During this period, did there come a time when you ultimately became an assistant to her in the housekeeping

R. A. Hancock, for Employer, Direct.

department? A. After I had served for several months as a maid, she picked several girls that she thought would come up to being a housekeeper quality and she approached us and asked us if we were interested in becoming a housekeeper or assistant housekeeper, and I said I was, and so from then on when days, when we had enough girls that we could do the work, I served as her assistant.

Q. Who else was asked to serve in an assistant housekeeper role? A. Kay Taddeo and Jean Ranier.

Q. Were those people there from the time that you three were selected to act in this assistant role until the time that Mrs. Fitzpatrick left in late '71 or early '72; did these three people remain in assistant jobs or what became of them? A. Well, we all worked different days doing different things. Some days she had Jean and some days she had [310] Kay, and some days she had me to teach us a little bit about the baggage reports which were mentioned yesterday, and that type of work. Other days she had us inspecting rooms. But, well. . . we opened July the 15th, and from there on we had full occupancy. So, some days where some girl would call in sick, we ended up doing rooms just as if we were still a maid.

Q. Kay Taddeo, I think you mentioned? A. Yes.

Q. If Kay Taddeo worked with Mrs. Fitzpatrick during the time period we talked about, what would you be doing? A. Well, I might have been on my day off.

Q. Assuming you were there? A. I don't think that happened the days that I was there. Usually on my two days off that she would have Jean and Kay helping her.

Q. Jean Ranier was the other girl you mentioned? A. Yes.

Q. Would she ever do that on a day off; would Mrs. Ranier become engaged with Mrs. Fitzpatrick on the day you and other. . . you and the other girl were off? A. I presume she was. I don't know exactly. I [311] presume she did, from

R. A. Hancock, for Employer, Direct.

conversations that we had. Jean would tell me that she had did this with Mrs. Fitzpatrick or did that, according to what we were doing and you know, you get a group of ladies together and they are apt to talk about what they do and what they don't like about what they are doing and do like about what they are doing. You just make conversation, more or less.

Q. Was there any description any of you three women, the job titles; did they change, did someone put a new classification on or anything like that? A. No.

Q. As far as you know you were still a maid when Mrs. Fitzpatrick left? A. Mrs. Fitzpatrick, she was training us to be assistants.

Q. The three of you? A. The three of us.

Q. Were you still employed when Mrs. Fitzpatrick left in late '71, early '72, whenever it was? A. When Mrs. Fitzpatrick left, she explained to Kay and myself that we would be working the department, the housekeeping department and that I would be acting housekeeper and Kay would be my assistant.

[312] Q. When Mrs. Fitzpatrick was still there, on the occasions when she asked you to, did you pursue the paperwork that she described in her testimony yesterday, Employer's . . . let me finish, I think it's Employer's Exhibit 5 through 9, I believe? A. Yes, that is how we were taught. We had helped her with it.

Q. Those sheets simply tell you which rooms were occupied, in words, and which had to be cleaned; isn't that so? A. Correct.

Q. So there was no discretion involved?

Mr. Lipsitz: I object to that.

Mr. Drenning: Withdrawn.

R. A. Hancock, for Employer, Direct.

Q. (By Mr. Drenning) You don't decide which of the rooms you are supposed to be cleaning? A. No, sir.

Q. You take the rooms on the sheet and see that they are cleaned? A. Correct.

Q. With respect to the maids working a given area, were they assigned by Mrs. Fitzpatrick? A. Yes, as they was there. The girls were hired for sections. Some girls quit; and the sections would have to be replaced, and as she hired girls she [313] replaced them into that section.

Q. On your own authority, did you hire anyone before Mrs. Fitzpatrick left? A. No. I didn't.

Q. Who hired to your knowledge, during that period? A. Mr. King or Mrs. Fitzpatrick.

Q. Did you occasionally sit on interviews? A. I did sit on a few with Mrs. Fitzpatrick.

Q. For what purpose? A. Well, to more or less find out how she explained to girls the work.

Q. Did you ask questions of the person seeking employment? A. Not at that time, no.

Q. Okay. Did you fire anyone during the period? A. No, sir, I didn't.

Q. Then in late '71 or early '72, when Mrs. Fitzpatrick left, what, how did your duties change relative to the housekeeping department? A. Well, with Mrs. Fitzpatrick gone it was my duty to go to the front desk and get the night auditor's report, the front desk report and make out the girls papers. Each one is assigned a section and I would have to mark down, and of course if a certain girl had a section and she was off and then I would have [314] to replace her with one of the substitutes that would be on the payroll.

Q. Would that be someone you'd call and ask to help? A. In the summer time you have ten sections. You have fourteen girls plus a night maid that works from 11:00 to 7:00 and you

R. A. Hancock, for Employer, Direct.

have ten girls on and with your working schedule they rotate their days so they can get the Sunday or Saturday off, which all of us would like. So, they are rotated. This way the extra four girls that do not have a section assigned to them, have to pick up sections the day the girls are off.

Mr. Lipsitz: Excuse me. I suppose it's really not an objection, although I'm going to make it. The answer is not responsive. The witness was asked about calling in a substitute for girls on days off. She started talking about what happened during the summer time. I do object.

Q. (By Mr. Drenning) What happened if the girl scheduled to work did not show up? A. If a girl didn't show up that was scheduled to work, and we had enough maids on that we go along without getting another girl, then we did. If we needed another one, I'd go to the book that was there [315] with the girls' names and addresses . . . possibly it would be one of the girls on day off and I would call her and ask her to come in.

Q. Were you able to get additional help in that fashion? A. That is the way we usually worked it.

Q. If a maid would decline to come to work, would you ever threaten to fire her? A. No, sir.

Q. Did you ever discipline her in any fashion? A. No, sir.

Q. Did you ever reprimand her? A. No.

Q. The same question with respect to a maid that did not report for work on an assigned job on a particular day; did you ever threaten to discipline her? A. No.

Q. Reprimand her? A. No, sir.

Q. Fire her? A. No, sir, I don't have the authority.

Q. During the period of Mrs. Fitzpatrick's absence, did you have other people in the housekeeping department, other maids that help you with the paperwork, inspection and so on? [316] A. Only assistants would help me with this.

R. A. Hancock, for Employer, Direct.

Q. How many assistants were there. A. At one time, just one assistant each time.

Q. If the assistant were not there, would you use another maid? A. No, sir, I'd do it myself.

Q. The inspection process that was described, would it require you to look at every room to determine, number one, whether it was clean? A. Yes, sir.

Q. And number two, whether the proper items, paper or whatever were not there? A. Yes.

Q. In the event, and again speaking in Mrs. Fitzpatrick's absence, in the event a room were not cleaned during the time frame, what would you do? A. Well, at the end of the day these rooms that weren't cleaned, any maid that was still there, I'd ask them if they'd like to do it. Of course, if they wanted more time, they'd readily agree. We had no problem that way.

Q. Suppose, for any reason they were obliged to leave the Holiday Inn and you had no one there; what would you do?

Mr. Lipsitz: Excuse me. I haven't objected to [317] hypothetical questions, but I'm going to object to this hypothetical question. In questioning of the witness she has already testified there is no trouble with people staying over to do the work, of it being completed. Now, is asked, what would you do if you didn't have.

Mr. Drenning: I will withdraw that.

Q. (By Mr. Drenning) Mrs. Hancock, during the period of Mrs. Fitzpatrick's absence, would you have occasion to clean a full room from start to finish? A. Yes, sir, there was many times when we would be running at capacity that we didn't have enough maids. Now, in February . . . well, from October through to February you don't have the call for quite as many maids as you do from April and May, on. So,

R. A. Hancock, for Employer, Direct.

naturally, as your business increases . . . well, for instance you get a storm in the middle of the winter, you get full occupancy, you only have eight maids available; somebody has to pitch in to do that work.

Q. My question is, you would go in, however, and clean that room from start to finish? A. I certainly have.

Q. Can you make a guess or estimate of what frequency that would occur? A. I have did it many times. The girls were called [318] in that were sick and I couldn't get anybody to replace them, then I did, I went and did the section myself.

Q. When you say "the section" you mean the full wing of rooms? A. Whole wing of 14 rooms.

Q. You would do that yourself, without assistance? A. Maybe if girls got through during the day, at the end, they would come over and do one, but if at noon time, I did it myself, plus my other work.

Q. How often would that occur? A. It would often occur when we had a storm or didn't have enough girls on call. Winter months you don't keep as many maids on call as you do during the summer.

Q. Taking one example, unexpected guests; the second example, the maid's failure to report in, would oblige you to clean a section or one or more rooms. Would there be other situations that would involve your cleaning a room from start to finish? A. When you have new maids they can't clean quite as many rooms as girls that have been there a lot longer. As a consequence I have gone in to help girls to do rooms in sections because it's getting later in the day and I can see they got five or six rooms left.

[319] Q. Is there any other situation where you might become so engaged? A. As I said, if we don't have enough help, somebody has to do the work.

Q. You have answered with respect to, with the situation where you cleaned a room from start to finish and your other

R. A. Hancock, for Employer, Direct.

situation where you either clean a room that is improperly cleaned . . . let me be more precise; I'm talking about the period of Mrs. Fitzpatrick's absence, and would you have occasion to clean a room that had been improperly cleaned or to finish a room that had been partially cleaned? A. Yes, sir.

Q. How would those situations come up? A. Sometimes a girl got sick when doing the work; she asked to leave to go home, wasn't well. You certainly don't make somebody work as a maid when she doesn't feel good, unless she wants to stay; that is entirely up to her if somebody is sick, then we would do it.

Q. What else? A. Possibly the front desk would call, "Ruth, we have a man here that prefers Room 127. Is it possible to get it done?" Maybe the maid that is in there is doing a baggage room which means the customer is [320] staying over, and the customer may want his room done immediately. I have gone down and started the room. When she is finished, finished in the room she is working in, she has to come down and finish or it may be the other way around, I might finish the baggage room and she might do the other.

Q. That is enough of an example. During the time period of Mrs. Fitzpatrick's absence, what would you do in the event a room was not adequately cleaned? A. If it wasn't adequately cleaned, I would touch it up myself, or if the girl was in the habit of doing this regularly, then I would say to her, "You haven't been cleaning your tubs as clean as you should. Would you mind going back and doing it over?"

Q. Suppose she said, "Yes, I mind, and I won't."

Mr. Lipsitz: Just a minute. As it happens I have no objection to it, but not "suppose."

Hearing Officer: Did it happen?

Q. (By Mr. Drenning) Did a maid ever decline? A. No, no maid has ever declined to go back, because when I ask them

R. A. Hancock, for Employer, Direct.

to go back and do anything over I try very hard to watch my words and they know it's only . . . it's not really an order; just because I'm inspecting the rooms and . . .

Mr. Lipsitz: Excuse me. I object.

[321] Hearing Officer: I understand about the "suppose". Just not so much what you suppose, but what you did and what the other person did, okay?

Q. (By Mr. Drenning) Let me address myself now . . . I think you responded as to these questions. On the question of personnel that were hired for the housekeeping department during Mrs. Fitzpatrick's absence, can you estimate now how many people might have been employed as new employees while Mrs. Fitzpatrick was gone? A. Well, in the summer time we use 14 maids. In the winter time it drops down so that we use approximately, we have on call about 8 maids.

Q. What I'm asking you, did you have any new hires? A. If we had to have any new people to work, Mr. King would be aware of the situation, because he would know.

Mr. Lipsitz: Excuse me. Again, you know, I have no objection to developing a record in the interest of the Employer, but properly. Now, she wasn't asked anything about Mr. King, she was asked whether or not she had anything to do with bringing in new maids, in one form or another. She was telling something that wasn't asked.

[322] Hearing Officer: She was asked whether there were any new hires.

Mr. Lipsitz: Yes.

Q. (By Mr. Drenning) Just answer my question, Mrs. Hancock. During the period of Mrs. Fitzpatrick's absence, can you make an estimate of how many; an approximate estimate, how many new hires? A. Probably ten people were hired in that length of time.

R. A. Hancock, for Employer, Direct.

Q. About ten new hires, you believe? A. People come and go.

Q. Your best recollection? A. About ten.

Q. Now, during the time period you also had called in people to consult if the employees became ill or quit or whatever; people that Mrs. . . . or you and Mrs. Fitzpatrick had interviewed? A. Yes.

Q. Now, with respect to this number of employees that were new hires, let's say ten; did you talk with all those people or some of them? A. I had talked with some of them. Some of them talked with Mr. King or the assistant inn-keepers.

Q. Now, the people that you talked to, do you recall what you did in that interviewing process or in [323] that meeting? Did you show them around the Inn? What did you do? A. Well, it was . . . I turned around and I would approach them. I would look at their application. Possibly Mr. King had given me that application or the person there was the person who had given me the application, and I would look to see if they had any children and if they had children I would ask them if they had a babysitter. I would ask them if they had transportation, because Holiday Inn was on Bennett Road. There's no transportation out there.

Q. Okay. A. I would also ask them if they had a telephone because we do have to call them in occasionally.

Q. We understand the reason. Just indicate . . . A. Then I would describe the duties of the job. I would take them to a clean room and I would explain to them that the bed had to be made, the bath had to be done, the toilet had to be cleaned and all essentials.

Q. If the prospective employee indicated that he or she would take the job, what would you do? A. I would ask if they were still interested in the job. If they said they were, if we were desperately in need of help and Mr. King had

R. A. Hancock, for Employer, Direct.

already asked me to [324] have them come to work if they were interested in the job, I would. Otherwise I'd say to them, "We don't need anybody exactly today but we contemplate having new help, that it is up to Mr. King from there on, and you probably will be hearing from us in a few days."

Q. You'd tell the employee, the person that came in for the job interview, your words were you'd talk to Mr. King, is that what you'd say? A. Yes.

Q. Would you subsequently talk to Mr. King about the employee? A. Yes, I would take the application back down and if he was there I would talk to him. If he wasn't there I'd talk to the assistant innkeeper.

Q. The people assisting during the time period when Mrs. Fitzpatrick was gone was that one person or two people? A. We had one at a time.

Q. Did they ever talk to the candidates for employment, ever show them the rooms, that sort of business; do you recall? A. Not that I know of. If they did, they didn't tell me that they did.

Q. Well, Mrs. Fitzpatrick returned to the Inn in February of 1973? [325] A. Yes, sir.

Q. Could you tell me the circumstances that brought about her return? A. Well, she came back because the department, we had . . . my assistant quit and we were without an assistant, and Mr. King, I presume, called the home office. Anyway, Mrs. Fitzpatrick arrived.

Mr. Lipsitz: Excuse me, again. What the witness knows, not what she presumes. I object.

Q. (By Mr. Drenning) If you know the circumstances that brought back Mrs. Fitzpatrick, you can so testify. If you don't, you can so testify, or the best of your recollection. A. My assistant quit and Mr. King informed me that they were sending Mrs. Fitzpatrick back.

R. A. Hancock, for Employer, Direct.

Q. I don't mean to embarrass you, but had you been having difficulties with the assistant? A. Yes, I did.

Q. What sort of difficulties? A. Well, she would try to tell me what to do. Our rooms are set up in Holiday Inn fashion. She wanted different things put in the drawers, put on top of the rack, shoe shine cloth hung on the hanger and she wanted them put on . . . put in the drawers. She said people were apt not . . . were apt to knock the [326] hangers off and ruin the shoe shine cloth. Everything . . . everytime I had a day off she went through the desk and she rearranged it to her satisfaction.

Q. In summary, she differed in approach with respect to the way a room was cleaned or items equipped in it? A. Yes, she would.

Mr. Lipsitz: I think the witness was going to say something else.

Q. (By Mr. Drenning) Go ahead. Complete your answer. A. No, sir, I was not.

Q. Please. I'm sorry if I cut you off. A. No.

Q. Do you recall Mrs. Fitzpatrick's testimony with respect to returning to the Inn, among other times in November of 1972? A. She came back in November and I believe came back either late September or the first part of October.

Q. This November meeting, however, is this the only meeting . . . did you talk with Mrs. Fitzpatrick in that meeting about these difficulties? A. Yes, I did.

Q. Had you talked to Mrs. Fitzpatrick at any other [327] time about the difficulties? A. I talked on the phone about different things in the department. She would ask how I was making out. She would ask me how the help is, if I still had the same help that was there when she was there.

Q. When did you talk to Mrs. Fitzpatrick about the per-

R. A. Hancock, for Employer, Direct.

sonalities . . . the personality difficulties with the other woman? A. When she came up in November.

Q. That was the first time it really surfaced? A. Well, that I really talked to her about it.

Q. Did you talk to Mr. King about it? A. Yes, I talked to Mr. King about it several times.

Q. Mrs. Fitzpatrick returned in February. What time period in advance, how many months earlier than that had you talked to Mr. King? A. I think it was about October that I started talking with him.

Q. Do you have any notions about how many separate conversations with Mr. King you might have had relative to personality difficulties or disputes, whatever you want to call them? A. No, I can't tell you exactly how many conversations. When anything came up, she may have gone to him or I may have gone to him.

[328] Q. Then, Mrs. Fitzpatrick returned in February? A. Yes, sir.

Q. During the time period that Mrs. Fitzpatrick was gone, did you fire any employees? A. No, I didn't.

Q. May I ask, were any housekeeping employees terminated? A. There were housekeeping employees that we had got to the point that we didn't have quite as much work as we should have. There was one girl that didn't have a telephone and she couldn't let us know when she was coming in.

Q. Nobody was terminated; is that your answer? A. Most of them found better jobs.

Q. Did you have layoffs? A. Mrs. Tarnowski.

Q. Did you have layoffs while Mrs. Fitzpatrick was gone? A. Martha Tarnowski.

Q. Did you have layoffs; was anybody fired or terminated by Holiday Inn during that period? A. I don't know about the other departments.

R. A. Hancock, for Employer, Direct.

Q. No, I mean in housekeeping? A. No, I don't think anybody was fired.

Q. How many people would you say were laid off? [329] A. Well, we really didn't lay anybody off. You see, when we get down where we have fewer rooms to do, we try to give everybody a break. Some girls would go out and look for other jobs, and when they found them, they'd say they found something just automatically, out that way.

Q. You tried to spread the reduced work over the same number of people? A. If we could, but most of the time people would quit.

Q. Address yourself, please, to the return of Mrs. Fitzpatrick in February. What happened to your work upon Mrs. Fitzpatrick's return; how did your work change, if at all? A. I knew when Mrs. Fitzpatrick came back, I knew that she was taking over the department. I didn't have to be told. I knew that.

Q. Did she tell you? A. In the course of a meeting with the maids she explained that she was back to get the department into shape. That, automatically in my estimation, made her housekeeper again.

Mr. Lipsitz: I object.

Hearing Officer: The question was, I think, "How did your duties change after Mrs. Fitzpatrick [330] came back."

The Witness: Well, she came in February. We were starting to pick up that we needed more help. She took on the downstairs and I went to taking care of the upstairs because we had more rooms used upstairs.

Q. (By Mr. Drenning) So you had less inspecting? A. Yes.

Q. Okay. How about cleaning? Did you go back to cleaning more rooms than you did before? A. I did clean rooms, whatever the day happened to bring, you did do.

R. A. Hancock, for Employer, Direct.

Mr. Lipsitz: The question is did you clean more rooms. She hasn't answered that.

The Witness: I said, "Yes, sir."

Q. (By Mr. Drenning) The answer is you cleaned more rooms than you did while Mrs. Fitzpatrick was gone? A. Yes, sir.

Q. How about interviewing; did you sit on interviews again as you did with Mrs. Fitzpatrick? A. At times.

Q. Not always? A. Not always. Sometimes I did.

Q. Did you ask questions . . . this is now, talking about [331] after February? A. Yes.

Q. Did you ask questions of a prospective employee during these interviews when Mrs. Fitzpatrick was there? A. Sometimes.

Q. What sort of questions would you ask? A. Just depended on what the day was. Sometimes somebody would interrupt; the phone would ring; and she'd answer the phone, and the girl would be sitting there. I would try to make conversation with her. I would ask her if she had transportation, how many children she had; more or less try to make her feel at ease.

Q. If Mrs. Fitzpatrick discovers a room that is not properly cleaned, have you ever seen her clean it? A. No, sir.

Q. Has she asked you to clean it, the room that is not properly cleaned? A. Yes, sir.

Q. Can you think of some specific occasions that occurred? A. I think just about two weeks ago we had a room that a girl wasn't feeling too good, and somebody had a party in there, and they didn't mind heaving their [332] stomachs, it was Ruth's job to go down and clean it up.

Q. Mrs. Fitzpatrick? A. Mrs. Fitzpatrick. Mrs. Fitzpatrick asked me to do it.

Q. And how about the other maid? A. She wasn't feeling good that day.

R. A. Hancock, for Employer, Direct.

Q. I understand. Other examples, can you think of other examples, not where a maid is ill or feels herself to be ill? A. Usually if there's a room like that, why, we don't expect the girls to do it unless there is someone that doesn't come to say to you, "I have got a bad room." And you haven't examined it to find out, then they may do it. Most of the time they get on the telephone and call down to the linen room and say, "We've got a bad room." How about coming to look it over.

When . . .

Q. When you say "bad room", you mean somebody has vomited, had a drunken party? A. Yes.

Q. I don't understand the fact that you are called to come and look at it. Why would you be? A. The girl knows she don't really want to do it. She knows she calls and Ruth usually doesn't hesitate [333] and says, "Okay. Go and do another room." And I take on the responsibility doing that room.

Q. What do you do with that maid; send her to another room? A. It's her section, she just goes and does another room. Possibly, if I get it practically cleaned up, she will come back and clean it up. Everybody doesn't have a good stomach.

Q. How often does this occur? A. That is hard to say. It has happened 10 or 12 times in a year or can happen 20 times.

Q. You mentioned an incident of two weeks ago where the maid became ill because of vomiting. Can you think of another specific example where it occurs? A. Yes. It wasn't too long ago; I'd say possibly . . . well, it was just before the election in May. I had to go down and clean a room. A person had gone both ways, and taking his hand and smeared it over the wall and all. Now, you don't ask your help to do that, so I did it voluntarily.

Q. Has there ever been a situation where you were greeted

R. A. Hancock, for Employer, Direct.

by the decoration in the room and you said to the maid, "I won't clean it; you clean it." A. No, no.

Q. Has Mrs. Fitzpatrick ever cleaned a room like that [334] in that condition? A. Not to my knowledge.

Q. Okay. We'll characterize those as "unusual rooms" if we can, and let's address ourselves to a minor situation where the corner of the room may not be properly vacuumed or the bed may not be properly made or the mirror may not be properly cleaned, things of that sort. If you, in your inspection, came upon something like that, what would you do? A. Well, if it was vacuuming the floor, I usually tell the girl that then did that section to come back and vacuum the floor. She has the vacuum. I can't carry that in my pocket.

Q. Does it occur often; once a day, two times a day? A. Depends on the maid. We have some maids that hate to vacuum. You may have to call her back on two or three rooms. Other times it may be two or three weeks before you had to say anything.

Q. How about bathrooms that need additional work? A. The girls try very hard to clean the bathrooms spotless. Occasionally the light isn't just to suit.

Q. Just say that tub has scum on it? A. Ask them to come back and remove the scum. Say, "Your tub isn't just exactly like it ought to be. [335] Would you mind touching it up?"

Q. Would you do it on occasion? A. Yes, I did it many times.

Q. Did Mrs. Fitzpatrick ever touch up the tub or sink? A. That I couldn't say. I don't follow her around.

Q. Have you ever seen her do that? A. No, I don't believe so.

Q. Has she ever, Mrs. Fitzpatrick, has Mrs. Fitzpatrick ever told you since she has been back, to go clean a given bathroom that might not be properly cleaned? A. Oh, yes, she has asked me to do that.

R. A. Hancock, for Employer, Direct.

Q. Other maids, has she asked them to do it in other areas? A. Oh, yes.

Q. Incidentally, what sort of apparel do you wear when you work? A. I wear a uniform.

Q. Similar to what the maids wear? A. I wear a uniform exactly the same as the maids.

Q. What does Mrs. Fitzpatrick wear? A. She wears dresses.

Q. As she is dressed today, for example? A. Yes.

[336] Q. Your uniform contains pockets for equipment and supplies? A. Yes, they do.

Q. Does Mrs. Fitzpatrick carry the stuff around? A. I don't believe so. I haven't seen her carry it.

Q. Do you? A. Yes, I do.

Q. What is the compensation, what money do you receive for your work, Mrs. Hancock? A. I receive \$80 a week.

Q. Do you get more for overtime? A. No, sir.

Q. What do the maids get paid, do you know? A. They get paid \$1.85 an hour.

Q. Excuse me. Do you get any insurance additional to that received by the other maids? A. No, sir, I do not.

Q. Do you receive room and board? A. No, sir, I don't.

Q. How are vacations scheduled, Mrs. Hancock, for the maids? A. In the spring of the year Mr. King has said that he would like to know when the girls would take their vacations and he hoped that they would take [337] it when they were slack.

Q. Let's address ourselves to this spring; okay? A. Well, spring.

Q. He said that to you, he wanted to know? A. Not this spring because this spring Mrs. Fitzpatrick was back, but last spring he said, "Would you please ask the maids the time of vacations, when they'd like their vacations." When I asked

R. A. Hancock, for Employer, Direct.

them they didn't know when they wanted it. They couldn't. . . one maid, her son was a professor in Maryland. She decided that she wanted to go down and visit him. Just a few days before she was ready to go, she said, "Do you suppose I could get my vacation now?" And I asked Mr. King and he said he thought it would be all right, and I believe Doris asked him herself, too.

Q. Just in general terms. . . A. Another girl.

Q. You checked the data, number one, from the employees, as to their requests? A. Whenever they decided they wanted their vacation, they'd come in and say, "Ruth, do you think it is possible that we could have such and such a week for my vacation?" We have a calendar right beside the desk and we write it in there.

[338] Q. Do you take that calendar or piece of information to Mr. King? A. I'd go down and ask Mr. King if he thought it would be all right if the girl had her vacation at that time. He'd say yes or no and we had to make some other adjustment. He'd say, "I'll let you know, if it is going to be busy." I don't know where he gets his information, but I think it would be from the records of the year before.

Q. In any case, he makes the decision? A. He makes the decision.

Q. With respect to Mrs. Fitzpatrick's return, if you know, how was the vacation schedule handled for this year? A. This year, when the girl asked for it, if she happened to come in and Mrs. Fitzpatrick wasn't in the room, she'd say, "Ruth, do you think it is possible that I have such and such a day off or week off;" I would write it on the calendar or say to her, ask Mrs. Fitzpatrick when she comes in. If you see her before I do, you ask her yourself, and she can take it up with Mr. King.

Q. Each maid's request was written up on a first-come, first-serve basis on the calendar? A. Yes.

R. A. Hancock, for Employer, Direct.

[339] Q. If a maid said they wanted a certain week and the second maid said they wanted a certain week, what would occur then? A. We didn't have that happen.

Q. Okay. Have there been any wage increases on the maids since Mrs. Fitzpatrick has been back or before that? A. Not to my knowledge.

Q. Do you and/or Mrs. Fitzpatrick have occasion to speak to the innkeepers from time-to-time about fluctuations in business and so on? A. Well, when we see that we aren't having as many rooms. . .

Q. For example, if an increase in business is expected, the ski season or whatever, does Mr. King report that to you, or Mrs. Fitzpatrick? A. He would report it to Mrs. Fitzpatrick when she is here. If she wasn't here, he'd say to me, "Ruth, I think we're going to have a lot of skiers this weekend, approximately this many reservations, and see if you can get your girls to work that weekend."

Q. Okay. There would be nothing you could do to prepare for the increased business except get the personnel. Anything else you could do to prepare [340] for the increase in business? A. If we felt it was not that much, I'd say to him we don't have the girls available and he'd go through his files and have some girls come in.

Q. Does he call them or did you? A. Well, he might ask me to call them.

Q. Would he give you their names? A. Of new applications, yes.

Mr. Drenning: I have no more questions.

Mr. Lipsitz: May I have a recess to read this?

Hearing Officer: Yes. Let's take ten minutes.

(Short recess taken.)

R. A. Hancock, for Employer, Cross.

Hearing Officer: Back on the record.

CROSS EXAMINATION:

Q. (By Mr. Lipsitz) Mrs. Hancock, during the time Mrs. Fitzpatrick was gone, between late '71 and February of '73, if one of the maids didn't show up on schedule, what was the first thing you did? A. Well, if she didn't show up on schedule I would call their home to see if there was some reason they didn't come in.

Q. Why did you do that? A. Well, I would like to know if there was some reason they didn't want to come in, if they were sick.

Q. What interest did you have in that? [341] A. Well, there was the room to be done; you wanted them covered.

Q. Were you in charge? A. Not really.

Q. Then what was your interest in calling? A. Well, you can't. . . I would have to do rooms if I hadn't called somebody.

Q. But you weren't in charge; is that right? I mean you weren't in charge of that housekeeping department during the period of time, were you? A. I was acting housekeeper.

Q. Then you were in charge, weren't you? A. Not really. May I explain?

Q. Yes, go ahead. A. When Mrs. Fitzpatrick left, Mr. King and I had a conversation that he and I talked about my inexperience and he said, and I agreed with him that I would work as acting housekeeper and he would work hand-in-hand with me.

Q. Why didn't he ask you to call the absent maid? A. Well, at that time we started work at 8:30 in the morning. If Mr. King happened to be on the late shift working at the motel, I might have been there until 2:00, 3:00 o'clock in the morning with a banquet. I could have called him. He told me that [342] at anytime I needed any help, to call him.

R. A. Hancock, for Employer, Cross.

Q. Why didn't you call him when a maid was absent instead of calling her yourself? A. It was much easier to do it myself.

Q. And it was your responsibility? A. No, it wasn't.

Q. Mrs. Hancock, did you make a statement to the National Labor Relations Board in connection with an investigation? A. Yes, I did.

Q. Did you sign it? A. Yes, I did.

Q. Did you or did you not tell the agent of the National Labor Relations Board "I have been employed by Holiday Inn at Dunkirk, New York, since June 1971. I started as a maid for about six months. I was then appointed assistant housekeeper. I served in this position for two or three months, then I was made housekeeper." Didn't you say that to the National Labor Relations Board Agent? A. I may. . .

Q. Did you or did you not make that statement to the National Labor Relations Board Agent? A. With the extra word in there.

Q. Don't tell me. . .

[343] Hearing Officer: Show the witness the statement.

The Witness: I had it on paper and I asked him to change it.

Q. (By Mr. Lipsitz) I'm not asking you that. I'm just asking if you made that statement.

Mr. Lipsitz: Would you mark this, please.

(The document above-referred to, was marked Petitioner's Exhibit 2 for identification.)

Q. (By Mr. Lipsitz) I show you what has been identified as Petitioner's Exhibit 2, a statement consisting of ten pages? A. Yes, I signed them.

R. A. Hancock, for Employer, Cross.

Q. At the end of Page 8, is that your signature? A. That is my signature. That is, sir.

Q. And it says, before your signature, "I have read this statement consisting of seven handwritten pages. I swear it is true and correct, to the best of my knowledge and belief." Is that a truthful statement, at the time? A. Yes.

Q. You didn't lie, did you? A. I did not lie, no, sir.

Q. I show you Page 10 and ask you if you signed your name, "Ruth Hancock"? A. Yes.

[344] Q. And the paragraph before is the same statement, "I have read the statement consisting of three handwritten pages. I swear it is true and correct to the best of my knowledge and belief." Is that a correct statement? A. Yes, sir.

Q. Did you read the statement before you signed it? A. I did, sir.

Q. Did you . . . A. I explained to the man . . .

Q. Did you make any corrections in the first paragraph, "I was made housekeeper"; did you make any corrections to that first paragraph? Did you or didn't you? A. Not on that paper, no, I didn't.

Q. Did you make it on any other piece of paper? A. No, I verbally . . .

Q. Before or after you signed it? A. Before I signed it.

Q. Then, why didn't you make a correction on it? A. Because he did the writing.

Q. Mrs. Hancock, were there words crossed off at other places? A. Yes.

[345] Q. He did the writing, didn't he? A. Yes, he did.

Q. You didn't object to his crossing off words in other places? A. No.

Q. And he did, didn't he? A. Yes, sir.

Q. But you didn't ask him to put in the word "acting"? A. No, I don't think I did. If it suits you, fine.

R. A. Hancock, for Employer, Cross.

Q. It don't suit me. It is the truth. Whether or not you had a conversation about your inexperience, you were the person in charge of the housekeeping department when Mrs. Fitzpatrick left; isn't that correct? A. I was housekeeper.

Q. What were the duties of the housekeeper, Mrs. Hancock? A. The duties of a housekeeper is to give the girls their papers in the morning, to go to the front desk and get the room for occupancy, to inspect the rooms, and if there's any question about the rooms, contact the front desk to find out what they know about it. If there's still any question contact [346] the assistant innkeeper, and to talk with the girls.

Q. Talk about what? The weather? A. Sometimes, yes.

Q. What else besides the weather, Mrs. Hancock? A. If their rooms weren't satisfactory.

Q. What about if they weren't; did you congratulate them or not? A. I. . . no, I would ask them to please do what they had to do over.

Q. And you would point out things done improperly, wouldn't you? A. Yes, I would.

Q. What other duties does a housekeeper have? A. Those are mainly. . .

Q. That doesn't add up to becoming in charge of a housekeeping department, does it; is that what you're saying? A. Not everything.

Q. What else was done in the housekeeping department by anybody than you except the actual physical work, during the time Mrs. Fitzpatrick was absent? A. Well, there was hiring done by Mr. King.

Q. Other than hiring, what else? A. I can't say, offhand.

Q. Because, as you sit here under oath trying to tell [347] the truth, now, as you did in your statement; the fact is that you were in charge of housekeeping activities in the Holiday Inn at Dunkirk; isn't that correct? A. Under the supervision of Mr. King.

R. A. Hancock, for Employer, Cross.

Q. All right, we'll have it that way; under his supervision you were in charge of the housekeeping department; isn't that correct? A. Yes, sir.

Q. All right. Now when she was away during this period, and I'm using the term 13 months, because I think it was about 13 months, and you found that something hadn't been done according to Holiday Inn standards, according to your view, as well as they should have been done, you would talk to the maid responsible for those rooms; is that not correct? A. I would ask them.

Q. You would talk to her; isn't that correct? A. Well, yes, I would talk to her.

Q. And you would ask the maid to correct the error; isn't that correct? A. Correct.

Q. And you never had a maid refuse to correct an error; isn't that correct? A. No, I didn't.

[348] Q. You testified that you . . . that they knew when you asked them, that they were not in order? A. That is, the group of girls tried to keep a very . . .

Q. You testified that "they" meaning the maids . . . when you talked to them about correcting the errors, and my notes indicate they said, "No, it is not in order;" I want to know sitting there how a maid knew when you were giving an order, when you were pointing out something, how Mrs. Hancock knew that the maid knew that it wasn't an order. You tell me that. A. I can't say what they would think.

Q. That's right. Now, normally during the peak season you have 14 maids. A. We have 14 maids. We have 10 girls working.

Q. And 4 that spell them? A. Yes.

Q. The 10 share equally the gross number of rooms; is that it? A. Yes.

Q. How many rooms is that? A. 13 to 14 in each section.

R. A. Hancock, for Employer, Cross.

Q. In other words, 130 to 140 rooms? A. Yes, sir.

Q. When the season became slack as it did during the [349] 13-month period, did it not? A. Yes, sir.

Q. And you had fewer maids; isn't that correct? A. Yes, sir.

Q. Now, there came a time when some maids who were on the payroll were no longer on the payroll, when the season became slack; isn't that correct? A. At the time we started to get slack, different ones were able to find other work and they quit.

Q. Just answer my questions. We will get to your answers later on. At the time when the season became slack, some maids no longer remained on the payroll; isn't that correct? A. Yes, sir.

Q. Did one of them just come up to you and say, "I'm going" is that how it happened? A. There were several of them that came at different times and said, "Ruth, we have found another job."

Q. Did you or did you not speak to any of them and say, "It is a good idea to begin looking because we're going to have to reduce the number of maids"? A. No, sir, I did not.

Q. There never came an occasion when you were going to have to make a decision or ask Mr. King to [350] make the decision to reduce the number on the payroll; is that correct? A. No, just Martha Tarnowski.

Q. What was the reason with her? A. She didn't have a phone. If we didn't have enough girls, we couldn't call and say we needed somebody. We couldn't. . .she was in the habit that she didn't contact me either when she couldn't come to work.

Q. What did you do about that? A. I went to Mr. King and explained it to him that we were getting a lot less rooms and he said, well he said the last one hired will have to be temporarily laid off.

R. A. Hancock, for Employer, Cross.

Q. That was Martha? A. That was Martha.

Q. You didn't explain to him about not being able to get in touch with her? A. (No response.)

Q. You didn't mention anything like that to him; is that it? A. No, these things had already been talked over at different times with Mr. King, and not a specific time, I didn't.

Q. Did you tell Mr. King about the fact that Martha [351] didn't have a telephone and it was difficult to get in touch with her? A. At times.

Q. He knew that before he decided to lay her off? A. She was the last one hired.

Q. He knew that before he decided to lay her off; is that correct? A. Yes, sir.

Q. During the time of the 13-month period did you clean rooms? A. Yes, I did.

Q. Did any guest ~~dirty~~ a room in the fashion that you testified to on two recent occasions during this 13-month period? A. Yes, sir.

Q. More than once? A. Yes, sir.

Q. More than once you went in and cleaned up the room? A. Yes, I did.

Q. If shorthanded, you pitched in and helped also, didn't you? A. Yes, sir, I did.

Q. What did you wear during the 13-months? A. I was wearing. . .

[352] Q. The same as you are wearing now? A. Not the dress.

Q. The same that you are wearing now, wearing at work? A. Might have. . .

Q. The same or different? A. Might have been a different one. It might have been a different one in between.

Q. Same type? A. Same type uniform, yes, sir.

Q. Did you have an office during the 13-month period?

R. A. Hancock, for Employer, Cross.

A. There was a desk in the linen room where everybody congregates or we come to.

Q. What did you do at the desk, lay on it, use it for desk purposes? A. The desk, in the drawer it had pens. It also has the girls' phone numbers. It also has in there, inventory. It also has the papers for the linen count, notebooks on that. There were several things in there. On top of the desk is a lamp and basket where supplies are kept.

Q. Who placed the documents and items that you mentioned in the desk? A. Well, originally they were put in by Mrs. Fitzpatrick.

[353] Q. Then, during her absence for this 13-month period, who placed or replaced those items in there? A. Either my assistant or myself.

Q. Now it was that desk concerning which some assistant continued to arrange and rearrange, that you objected to; isn't that right? A. We. . .

Q. Isn't that right? A. Yes, sir.

Q. And you looked upon that as being the acting housekeeper or housekeeper under the supervision of Mr. King's desk for the purpose of conducting the housekeeping business; isn't that correct? A. That is a desk that is used in the housekeeping department, yes.

Q. By the housekeeper; isn't that correct? A. A lot of people use that desk.

Q. What does the maid use it for? A. She's apt to sit down there just to sit.

Q. Other than to sit on it? A. Well, bring back the papers.

Q. What papers? A. Papers that. . .

Q. Are returned to the housekeeper? A. Yes.

[354] Q. So, it is used by the housekeeper? A. Yes.

Q. The maid doesn't use the desk except for purposes of housekeeper; isn't that correct? A. Well, I would say yes.

R. A. Hancock, for Employer, Cross.

Q. Thank you. Now, November of 1972, when Mrs. Fitzpatrick came to visit, you told her about certain difficulties; is that correct? A. I did.

Q. What were the difficulties that you mentioned to her? A. Well, I explained to her that my assistant on my days off, when I came back the following day, just in the attitudes and the condition of the place, I could sense things were wrong. Different things would be brought up to me and different things that the assistant and I would discuss about the work that the girls had did. Sometimes one of the girls would come to me and they'd tell me that they heard that I wasn't satisfied with this or that or possibly on my day off, somebody else had did a room in a girl's section because it had been her day off the day before, and the assistant would talk with this girl and this girl would be very perturbed at the other girls that did her room because it wasn't up to [355] standards that she expected it to be.

Q. So the maid came to you and complained to you about what the assistant was doing; right? A. Yes.

Q. It were. . . it was these things that you told her, stating that it appeared that there were some problems in the house-keeping department; is that correct? A. Yes, sir.

Q. Did you tell her you thought you needed some help in this respect? A. I asked her what she thought I should do about it.

Q. What did she tell you? A. She asked me if I had talked to Mr. King and I said that I had to some extent.

Q. What else did she tell you? A. She said, "Well, Ruth, you should talk with Mr. King again when any of this comes up again." Which I did.

Q. Did she say anything to you affirmatively about how you were getting along during the nine-month period? A. I can't say what the girls told her. That would be hearsay.

R. A. Hancock, for Employer, Cross.

Q. I don't think you understand my question. Did [356] Mrs. Fitzpatrick during the meeting in November say anything to you about your progress during the intervening ten or eleven month period? A. That is what I am trying to say.

Q. I just want what she told you. A. Yes, she just said she was pleased about what I was doing.

Q. That answers my question. When Mrs. Fitzpatrick returned in February, was there a meeting of the housekeeping personnel? A. She called us altogether, all the maids.

Q. What did she say to them? A. She said that she was here to straighten out the department.

Q. What did she say about you, if anything, to these other maids? A. I don't recall what she said.

Q. Do you recall that she said something but you can't recall exactly what it was? A. Just said, "I'm back here to get the department straightened out and see what things are going on and make sure everything is back to normal, if there's any problems."

Q. She didn't say that Mrs. Hancock's authority was no longer to be used by her or that Mrs. Hancock [357] was no longer going to correct the maids or that Mrs. Hancock is no longer doing any housekeeping duties? A. She said she was back to take over the department.

Q. You told me that. I'm asking another question. Would you read it back?

(The pending question was read back by the Reporter.)

The Witness: I did not hear her say anything like that.

Q. (By Mr. Lipsitz) Before she returned, you did inspections upstairs and downstairs; isn't that correct? A. Yes.

Q. And after she returned you continued to inspect upstairs; isn't that correct? A. Yes, sir.

R. A. Hancock, for Employer, Cross.

Q. How much time did that take on a daily basis? A. Depends on how many rooms I would say are rented.

Q. If it is fully occupied? A. If it is fully occupied you have to take at least five minutes to each room, possibly ten. If the girl hadn't did the room and she is busy and you stop to touch it up, it may take you fifteen, twenty [358] minutes with each room.

Q. How many rooms is that? A. 69 upstairs and 67 down.

Q. If you took five to ten minutes for 69 rooms you could figure out how many hours that was that you were doing inspecting work; is that correct? A. Well, just depends on how many rooms there were.

Q. I said if it took five to ten minutes, it's possible you took all day long inspecting? A. Right.

Q. And you had done that since her return? A. Yes.

Q. More than once? A. Helped with the room. . .

Q. No, please. One at a time. You have on more than one occasion since her return spent the whole day inspecting rooms upstairs, haven't you? A. Well, I have.

Q. Yes. And what is the minimum amount of time since her return that you spent inspecting rooms upstairs on a daily basis; start with one minute. A. Well, about three or four hours.

Q. So, no matter whether it was peak season or less than peak season, you spent approximately a half to a full day inspecting since her return; [359] isn't that correct? A. Not always. If we have a girl out and haven't anybody to refill. . .

Q. Then you would take it. . . A. Then she'd do both floors.

Q. Except for those occasions, except for occasions when you'd pitch in due to absence, you would spend a half to a full day on inspection? A. Three days a week we have linen brought in on a rental basis.

R. A. Hancock, for Employer, Cross.

Q. Excuse me. You are telling me another duty you performed since she returned? A. This is one of the duties we have had since we started.

Q. Mrs. Hancock, on the days that you did inspecting and had no obligations or were not given the rooms that an absent or sick girl was supposed to do, and you didn't have linen brought in, you spent from half to full-time doing inspecting? A. Yes, sir.

Q. That happened more than one day a week? A. Yes, sir.

Q. As a matter of fact it happens two to three days a week, doesn't it? A. Yes.

[360] Q. Other than the days the linen is brought in, didn't you say two or three days? A. Yes, sir.

Q. What did you do when the linen is brought in? A. The linen is brought in and has to be counted to make sure there's no shortage on the amount received.

Q. Who does the counting? A. The linen boys and Mrs. Fitzpatrick and I also do.

Q. Did you do this during the 13-month period? A. Yes, I did.

Q. What other duties, forgetting about actual cleaning of a room, since her return? A. Well, there is. . . I don't really know what you want me to tell.

Q. You don't understand my question? A. I don't.

Q. In what other respect has your job changed from the 13-month period after she came back, to the present time; two separate periods, the 13-month period in February to the present, to the date of election? A. Well, since Mrs. Fitzpatrick had been back, she has had it under a housekeeping program she has had [361] the rooms painted and she has taken care of this.

Q. That is something she has done. What has Mrs. Hancock not done that she did during the 13-month period? A. I did some of those things during the 13-month period.

R. A. Hancock, for Employer, Cross.

Q. Some of what things; having rooms painted? A. Yes, sir. I didn't paint them, no, sir. I didn't paint them. The maintenance men has had that. I was told that the rooms were to be dismantled.

Q. So now Mrs. Fitzpatrick has done that? A. Yes, she does that.

Q. That is one difference. What other difference? A. Well, we have an inventory to take.

Q. What is that? A. Well, we have to have inventory taken twice a month, of supplies.

Q. Supplies for the rooms? A. Yes.

Q. Shoeshine cloths, bath mats and so forth? A. You have to know if you have enough supplies on hand.

Q. Who does that? A. Mrs. Fitzpatrick and myself.

Q. You do it with her? [362] A. Depends on the time of day.

Q. Keep in mind my question. What things have changed about your job, what don't you do now that you used to do before? A. I am an assistant now, where before I was acting housekeeper.

Q. Yes, Mrs. Hancock, we know, but I am asking you to tell me about your duties, those that you don't do now that you used to do before. When you get finished with that, I'm going to ask you what you do now that you didn't do before.

Answer my first question first. A. I think the duties since Mrs. Fitzpatrick has been back, we have been working on a bigger scale; the rooms have more occupancy, so I work with her on many things. Now that the work was dropped off, I don't know what my duties. . .

Q. I'm not asking you to speculate. I'm asking you to tell me, give me an answer to my question. I will repeat my question. When she came back in February and between that date and the date of the election, what duties did you stop

R. A. Hancock, for Employer, Cross.

performing that you had performed while she was away during the 13-month period. Do you understand my question? [363] A. I still perform the same duties because she performs them also. I don't perform. . . I just don't understand what you want me to say. I don't do. . .

Q. I want then for you to tell me the truth. A. I'm telling the truth.

Q. Excuse me. And I think you're trying to tell the truth. A. I am telling the truth.

Q. I don't want you to say anything in response to questions except the truth. Now, do you understand the question that I asked? A. Before Mrs. Fitzpatrick came back if we needed more help I would go to Mr. King and I would ask him to take care of this matter.

Q. Now, she does it? A. Now, she does it.

Q. That is one of the differences not doing that anymore? A. Not doing that anymore.

Q. Wonderful. That is number one. Number two. A. If there is anything that has to be done that is not done on a daily scale, she makes the decision to have those things done.

Q. Number three? A. If there's any problems she takes them up with [364] Mr. King or with the girls. I didn't take any problems. . . I took any problems to Mr. King when she was not there.

Q. Number four? A. She makes up the work schedule.

Q. You don't do that anymore? A. No, sir.

Q. But you did while she was away? A. I did it with Mr. King's approval.

Q. You made it up and submitted it to him for approval? A. I submitted it to him and we discussed it.

Q. You made it up and submitted to him this work schedule for approval; is that right? A. Yes, sir.

Q. Regarding number three, taking up problems with

R. A. Hancock, for Employer, Cross.

girls, you still take up problems with girls if they don't do their work correctly, don't you? A. If their work. . . I would call them back to the room to do the spots over, like I have explained.

Q. That you did before and you still do that; is that correct? A. If it continues, I go to Mrs. Fitzpatrick and ask her to see what she could do with the girl.

Q. Any other differences? [365] A. Probably is a good many. You have gotten me so I can't tell what any of them are.

Q. You want to rest to recover your demeanor? A. No, I am not. . .

Q. I am not bullying you, am I? A. Well, you are trying to get me to say things that I can't, I don't know the answers to tell you.

Q. If you don't know an answer, just say you don't know an answer. I won't pursue it at that point. What have you done since February to the date of the election that you didn't do before? A. You just asked me. I just gave you those answers.

Q. Same answers; is that it? You have nothing to add as an answer to that question; is that right? A. Yes, sir.

Q. Does, Mrs. Fitzpatrick, since February until the date of the election, has she taken time off? A. She has gone away for two and a half days, twice.

Q. Who performed her duties while she was gone? A. I did.

Q. And does she work seven days a week? A. She has her days off.

Q. Does that mean she doesn't work seven days a week? [366] A. She is in the motel and it is very easy to go to her and ask her if there was any problems that come up, but she has days off.

Q. Does that mean she doesn't work seven days a week? A. No, she doesn't work seven days a week.

R. A. Hancock, for Employer, Cross.

Q. On her days off, who does the things she would do while she was at the job? A. I do.

Q. Mrs. Hancock; is that right? A. Yes, sir.

Q. Since February to the present time have you ever had a girl or maid not show up because of illness or something? A. Well, they call in and say. . .

Q. Has it ever happened? A. They called in and said they were sick, yes, sir.

Q. Has it happened that one just didn't show up and didn't call? A. No, sir.

Q. When one had called in sick, said she couldn't come in, what did you do if anything since February until the time of the election? A. Well, I would replace her, have a girl come in that had a day off.

[367] Q. You would call somebody in and have them come in? A. Yes.

Q. The same as you did before; is that right? A. Yes, sir.

Q. Did you have vacations this year? A. Who?

Q. The maids, housekeeping department? A. Yes, sir.

Q. Did they speak to you at all about preferences? A. Spoke to Mrs. Fitzpatrick about their vacation.

Q. Not to you? A. One girl had her vacation and talked to Fitzpatrick about it.

Q. Nobody talked to you about a vacation since her return? A. No, because only one girl had her vacation since.

Q. I see. All right. By the way, during the 13-month period, from time-to-time, you took over a section when somebody was absent, didn't you? A. Yes, I did that.

Q. Now, have there been occasions since February to the time of the election when one of the maids persisted, that is to say, repeated the same kind of error? A. You mean each day, she did the same thing?

Q. I don't mean each day, but I mean more than once,

R. A. Hancock, for Employer, Cross.

[368] continued to do the wrong thing? A. Anybody is apt to do that.

Q. Has it happened? I'm asking you if it happened? You may have perfect maids? A. We have pretty good ones, I will tell you that.

Q. That is good but maids have repeated the same error? A. That is correct.

Q. Since February have you ever talked to such a person? A. I have just said to them, "Would you come back and do this over?" If you haven't did the mirror, the mirror has got spots, would you please come back and touch them up. The next day, "Would you please come back and touch up the mirror?" Same words.

Q. If it didn't seem to do much good, you'd then tell Mrs. Fitzpatrick? A. I would tell her I was having the problem.

Q. You would tell her? A. I would tell her so and so wasn't touching up whatever it was.

Q. What is the average hours that are worked by a maid per week? A. Depends on the season.

Q. All right. [369] A. If it is our busy season it can run from 30 to 37, 40 hours, 42 or 44.

Q. What about the non-busy season? A. Non-busy season it can run from 25 to 30.

Q. In your statement at Page 4 there is this statement. These words, "In Mrs. Fitzpatrick's absence I issued the orders for the day and I take her place. That is, the innkeeper, assistant innkeeper would call me instead of her and tell me what should be done in the department. We have different days off, and she takes a vacation three or four days or a week at a time. She doesn't take a long vacation." Is this a correct statement? A. May I explain?

Q. Is it a correct statement? A. No, it is not.

Q. What is in error about it? A. When the gentleman that

R. A. Hancock, for Employer, Cross.

took the statement asked me if Mrs. Fitzpatrick had vacations and I told him that at times she had two or three days, but possibly a week, but she was never away very long when she was at the Dunkirk Inn; at the time, but he didn't put in there that it was just vacation. The way he phrased it made it look like she was away from the Holiday Inn, which was back in February, two times.

[370] Q. That was the only correction to the statement, but you wouldn't change that when you made the statement? A. I did, but the man wouldn't change it. He said, "Mrs. Hancock, I have wrote down just about everything and it makes no difference because only you and myself and one other person in the Labor Board will see your statement."

Q. Mrs. Hancock, there were other places where he had made corrections for you; isn't that correct? A. There are places where I insisted on having him scratch out.

Q. And you made no correction? A. I tried to get him to change it. He said, "What difference does that little bit of wording make?"

Q. He nevertheless accepted corrections where you otherwise told about them; is that correct? A. He scratched most of them and he was writing them down.

Q. And he made corrections at your request; is that correct? A. Yes.

Q. Regarding this particular paragraph, you didn't ask him to make corrections? A. I did, sir.

[371] Q. What did you ask him to put in there? A. I asked him to change how long, when Mrs. Fitzpatrick took a vacation and how long the vacations were for. I said when at the Holiday Inn she may have gone away for two or three days or possibly a week if she had a vacation coming. I said I don't know what Mrs. Fitzpatrick's vacations are.

Q. And you asked him to make those statements on here; is that right? A. We discussed it and he said. . .

R. A. Hancock, for Employer, Cross.

Q. It didn't make any difference? A. He said it didn't make any difference.

Q. And you read it and signed it? A. Yes, I did.

Q. You didn't ask him to make corrections to this portion, "In Mrs. Fitzpatrick's absence I issued the orders for the day and I take her place." You didn't ask him to correct that, did you? A. No, I didn't ask him to correct that.

Q. Isn't it a fact that during the 13-month period you interviewed about half of the maids that came in for interviews?

A. May I clarify that also?

Q. No. What percentage did you interview? A. I interviewed people, girls that came in for the [372] job, to tell them what the job consisted of and that would be 50%, what I was talking about, with them.

Q. 50% of what, of these girls that came in to talk about being a maid? A. Yes, sir.

Q. Isn't that what you said "I have interviewed about 50% of the maids"? A. Yes, sir.

Q. Since Mrs. Fitzpatrick's return, you have, on occasion, sat with her during such interviews and asked questions; isn't that right? A. Yes, sir.

Q. Now, are there meetings at which you attend with the assistant innkeeper, the chef and Mrs. Fitzpatrick and sales manager? A. There have been, at times when there has been things to discuss, but there hasn't been anything to discuss, we haven't had any.

Q. Have you had any meetings of that kind since February? A. Not that I have attended.

Q. Did you within the 13-month period? A. Yes, I did.

Q. Are you certain since February you haven't attended any? [373] A. I don't recall any. I may have attended one. I don't recall any.

Q. Isn't it a fact that these meetings are for the purpose of

R. A. Hancock, for Employer. Cross.

reviewing the work, and to talk about upcoming events and what has to be done including what rooms are going to be painted and what rooms are going to be available; things of that character? A. Yes, sir.

Q. When a maid reports absent, for either sickness or whatever the reason, who receives the call? A. Sometimes the girl on the front desk.

Q. And sometimes who? A. Sometimes they refer to the housekeeping department and whoever answers the phone takes the message.

Q. Have you excused maids early, after they have informed you that they are not feeling well? A. If any of the maids come to me and say, "Ruth, I don't feel good. Do you think it is possible for me to go home?" I have told them all right.

Q. By the way, Mrs. Fitzpatrick was in telephone communication during the 13-month period on a fairly regular basis, wasn't she? A. Yes, sir.

Q. Did she call and ask for you, do you know? {374} A. Sometimes the call would come into Mr. King's office and he would call me to come down and talk to her. Sometimes the phone call came through in the housekeeping department and whoever answered the phone talked with her and eventually I probably got to talk with her.

Q. Now, isn't it a fact that on several occasions, and I'm specifically referring to Alberta Moore and Janet Brooks, that you were told by the then assistant innkeeper, if you found that they were satisfactory, that you could tell them to report for work? A. On my day off, these two girls came in with their applications. I don't know if the innkeeper or assistant innkeeper talked with them or not but the assistant innkeeper at that time, the following day when he came in, he said, "Ruth," he said, "These two girls, from their ap-

R. A. Hancock, for Employer, Cross.

plications, I think they will be pretty good for the department," he said, "So the next one, when we need somebody", he said, "these are the ones I would like you to call to report to work and interview them and tell them the duties of the job."

Q. That is the way it happened? A. Yes, sir, that is how it happened.

Q. Didn't you tell the Examiner from the National [375] Labor Relations Board, in quoting. . . A. Started with the first page and the next page and I explained to him and then he would go to the second page.

Q. Do you mind if I complete my question? A. Yes, sir.

Q. Didn't you tell the Examiner from the Labor Board and I quote from Page 8 "Mr. Anderson asked me to interview both girls for maid positions. He gave me the application and said if they were satisfactory, to have them report the following day when we need help. I called the girls and told them to come in for an interview. They came in, I interviewed them and told them to report for work the next day." A. Mr. Feinberg wrote that down, then I stopped him and explained it to him that only Alberta Moore came in and I interviewed her and asked her to report to work the following day. We didn't need anybody right at that time more than the one and Alberta Moore said that she had a neighbor, Edna Tingue, that needed work, that she needed to come out and get a job.

Q. Mrs. Hancock, are you telling me that it didn't happen the way I read from the statement? A. No, sir; partly it did and partly it didn't.

[376] Q. Did you ask him to correct that? A. I did ask him to correct it and he went to the second page and he wrote what I have on the second one.

Q. Reading from the second page I quote. . .that is to

R. A. Hancock, for Employer, Cross.

say the second affidavit, that is Page 9, "When the first opening arrived Mr. Anderson asked me to call Alberta Moore, interview her and tell her to report for work the next day if I found her satisfactory." Is that correct? A. To the extent that when I explained the job to her. . . .

Q. Is that correct? A. Yes, it is correct.

Q. Thank you. A. Yes, it is correct.

Q. Now, Alberta Moore started to work and you told Moore to tell Edna to come in and you would give her an application? A. I explained to Alberta if the neighbor was looking for a job, she'd have to come in and make an application.

Q. And she subsequently came in and made an application; isn't that right? A. Yes, sir.

Q. In the meantime you spoke to Mr. King and told him [377] about this; isn't that right? A. Yes, I did.

Q. Mr. King said, "Interview her and if satisfactory let her report for work"; isn't that correct? A. Meaning. . . .

Q. Did he or didn't he say that? A. Yes, that is what he said.

Q. And Tingue. . . . A. Tingue.

Q. Tingue came in, you did interview her, and she appeared satisfactory to you so you told her to come into work; is that correct? A. Yes, I asked her to report for work.

Mr. Drenning: May I interrupt? This time frame we're talking about with respect to Moore and the other employee, Tingue, is this. . . .

Mr. Lipsitz: I don't know. I will be glad to find out if you want me to, when I'm finished.

Q. (By Mr. Lipsitz) Now, a few days after Tingue came into work, Mr. Anderson gave Janet Brooks an application and told you to call her and interview her and if you found

R. A. Hancock, for Employer, Cross.

her satisfactory, to tell her to report for work; isn't that correct? A. Yes, sir.

Q. You interviewed her and found her satisfactory [378] and told her to report for work and she did; isn't that correct? A. Yes, sir.

Q. This occurred, however, during the 13-month period; is that correct? A. Yes.

Q. Now, isn't it a fact that since she had been here, you have interviewed girls in the same manner? In the same manner as you did these three girls and had told them to report to work, with authority of Mrs. Fitzpatrick? A. With the authority of. . .since Mrs. Fitzpatrick has been here?

Q. Yes. A. No

Q. Didn't you tell the Examiner from the Labor Board, and I'm referring to Page 3 of the same second statement. . .A. Well. . .

Q. Excuse me. Page 10 of Statement 2, "She" meaning Fitzpatrick, "has been here a few months. While she has been here I have interviewed girls the same as reported above and told them to report the next day. She does this herself most of the time." Is this correct or is this not correct? [379] A. When a girl has come in and we both happen to be in the linen room, she doesn't ask me to leave the room. Let me finish, please.

Q. Sorry, Mrs. Hancock. I asked you a simple question whether or not the statement I quoted from the third page of the second affidavit is or is not correct? A. Under Mrs. Fitzpatrick's order I have asked the girl to come to work.

Q. No. I'm going to repeat the statement.

Hearing Officer: Will you please show her the statement?

Q. (By Mr. Lipsitz) Of course. You can read along with me, like a sing-a-long. Reading from what has been identified as Petitioner's No. 2, tenth total page, and third page of the

R. A. Hancock, for Employer, Cross.

second affidavit, "While she has been here I have interviewed girls the same as reported above, and told them to report the next day. She does this herself most of the time." Is that or is that not a correct statement? A. Well, as I explained to you before the . . .

Q. Is that or is that not a correct statement? A. It has happened, yes.

Q. That is a correct statement, is it then, Mrs. Hancock? [380] A. Yes.

Q. Mrs. Hancock, have you talked to Mr. King about your testimony that you were going to give here today? A. No, sir, I haven't.

Q. You are under oath now, you understand? A. I talked to Mr. Drenning about my testimony. Not Mr. King.

Q. I didn't ask you about Mr. Drenning. Didn't you talk to him during the recess yesterday? A. Not what I was going to talk about. Yes.

Mr. Lipsitz: No further questions.

Hearing Officer: Mr. Newsome?

CROSS EXAMINATION:

Q. (By Mr. Newsome) Is it essentially true, Mrs. Hancock, that in Mrs. Fitzpatrick's absence you issued the order for the day and took Mrs. Fitzpatrick's place? A. I have worked as acting housekeeper, yes.

Q. Essentially, you issue the orders for the day and to the maids, what is to be done; is that correct? A. Just more or less an automatic thing, yes.

Q. Now, when Mrs. Fitzpatrick returned. . . well, she called a meeting, and did she make a statement, or words to the effect that the employees would never go [381] to the front office with their problems, but to see Mrs. Hancock first? A. Not to my knowledge.

R. A. Hancock, for Employer, Re-direct.

Q. You don't recall that statement? A. I did not hear that statement, no, sir.

Q. Has there ever been a time when an employee by the name of Mrs. Dorothy Zelinski called you to notify you that she was not coming into work? A. She may have.

Q. Do you recall, do you specifically recall whether she did or did not? A. She called me when she was sick, that she wouldn't be into work.

Q. What did you do after receiving the call, if anything? A. I tried to get somebody else to fill in.

Q. Did you discuss it with Mr. King or Mrs. Fitzpatrick, if she was there during the time, did you discuss it with anyone, first? A. Well, I may have said to Mr. King that Dorothy was sick, she didn't show up today, but I don't remember saying anything in particular.

Q. Do you recall discussing it with her? A. No, sir, I don't.

Mr Newsome: I have no further questions.

[382] RE-DIRECT EXAMINATION:

Q. (By Mr. Drenning) Mrs. Hancock, Mr. Newsome just asked you about the remarks made by Mrs. Fitzpatrick at the maid meeting held and called by Mrs. Fitzpatrick in February when she returned to the Inn. The first part. . . Mr. Newsome asked did Mrs. Fitzpatrick say something to the effect, if you have any problems or when you have problems, come to somebody. Do you recall what she said in that connection; Mrs. Fitzpatrick? A. Well, Mrs. Fitzpatrick, when she came back and she had the maid meeting, she told the girls that she was back to straighten out the department and any problems should be brought to her.

Q. Was that the only remark that she made relative to the problems and who the maid should go to; did she make any other remarks in that connection? A. Not that I can recall.

R. A. Hancock, for Employer, Re-direct.

Q. The best you recollect, did she say something, say something about if you have any problems, come to me? A. That is the best of my recollection.

Q. Did she say where not to go? A. Not to my knowledge, didn't say anything.

Q. Did she say, "Don't go to Mr. King" or "Don't go to the innkeeper"? [383] A. No, never heard that.

Q. With respect to the period since Mrs. Fitzpatrick returned, has Mrs. Fitzpatrick given you orders from time-to-time in front of the other maids? A. Oh, yes, she told me what to do.

Q. In particular with rooms that have to be cleaned, things of that sort? A. Anything that happens to be needed to be done that day, just comes on the spur-of-the-moment where she's apt to say, "Ruth, go down and clean the lobby." Also, "Go clean the stairway" or "Go do a room", or "Would you go to the office and do this;" whatever she happens to need of me, and might ask me a million things.

Q. Does she give you instructions in the company of the other maids? A. Yes.

Q. Does she give instructions to other maids in your company? A. Other maids?

Q. Without issuing to you? A. Yes.

Q. With respect to the functions you performed since February, you responded, I believe, in answer to Mr. Lipsitz' question, that it may take you from [384] five to twenty minutes to inspect a room; that is what you testified to. A. Just depends on what the room is like.

Q. Why does it take you so long to inspect a room? A. There's a lot of different spots that you have to go through. Some days it takes you a little longer than it does other days.

Q. Are you cleaning the room at that time? A. If there are a few things I think need to be touched up and feel I want to do it myself, I go ahead and do it. It takes that much longer.

R. A. Hancock, for Employer, Re-direct.

Q. The corrected work in the room takes twenty minutes or longer? A. Yes.

Q. Would Mrs. Fitzpatrick do that? A. No, I don't think so. She may replace things in the room, but to do the actual cleaning of the room, I never seen her do it.

Q. Do you have any notion how long it would take Mrs. Fitzpatrick to inspect a room? A. She is a lot more experienced than I am. She can finish the downstairs a lot faster than I can do the upstairs.

Q. Does she finish faster because she doesn't clean? [385]
A. That could be one of the reasons.

Mr. Drenning: No more questions.

Mr Newsome: No more questions.

Mr. Lipsitz: No more questions.

EXAMINATION:

Q. (By the Hearing Officer) Mrs. Hancock, was it in February, 1973 that Mrs. Fitzpatrick came back? A. Yes, it was.

Q. Was it around that time that she had a meeting at which you were present and some of the maids of the Inn and she told the maids and you that she, Mrs. Fitzpatrick was there to get things in order in the housekeeping department? A. Yes, sir.

Q. And is it your testimony that at that meeting Mrs. Fitzpatrick said nothing about any change in your duties occasioned by her coming back? A. There was no specific thing said in front of me.

Q. At that meeting? A. At that meeting.

Q. Other than that meeting, did Mrs. Fitzpatrick say to you, around the time she returned, around February, 1973, what your duties would be from that time on? [386] A. No, sir. I just assumed when she returned. . .

R. A. Hancock, for Employer, Re-direct.

Mr. Lipsitz: I'm going to object to any assumption.

Hearing Officer: Well, I understand her answer, but. . .

Q. (By the Hearing Officer) Did she ever say to you that your duties were changed in some respect? A. No, she didn't tell me that. As we went along, I was ordered to do that and that, I knew my duties were changed.

Q. Have you excused maids to go home early when they told you they were not feeling well. A. When they were not feeling well, yes.

Q. Now, has that happened after the return of Mrs. Fitzpatrick around February, 1973, up to the time of the election? A. I wouldn't say that it happened before the election but a few weeks ago a girl came in and she was working and she came back to the linen room and I happened to be in the linen room. She said, "Ruth, I'm terribly sick. I can't stay." I said, "All right, you may go home."

Q. That was after the election? A. That was after the election.

Q. Had there been any instances like that after [387] February of 1973 and up to the time of the election, when you told a girl she could go home early? A. No, I don't think so. I may have, I just don't remember. But I do know that if anybody is sick and you have to bend over and do a tub and so forth. . .

Q. Right. Good reason for letting people go home, but you are not sure that it happened during this period? A. I recall just one instance recently it happened, but I don't recall any other.

Q. You had a talk with the innkeeper, Mr. Dean King, about the time you became acting housekeeper on the departure of Mrs. Fitzpatrick; is that right? A. Right, sir.

Q. And he discussed with you your inexperience? A. Well, this was not my line of work. I had worked in. . .

R. A. Hancock, for Employer, Re-direct.

Q. No. Did he discuss with you your inexperience? A. Yes, he did.

Q. Did he say you and he would work closely? A. He said we would work closely, close together.

Q. Besides saying those things, what did he tell you about what you were supposed to do? A. Well, I was to check with him each day on [388] whatever problems came up and anything that was out-of-the-ordinary that happened, come down and see him; if there was any problems with any person or anything he would like to come down and talk with the person. If there was a problem I was to bring it to his attention and if anybody asked me anything about vacations or something like that, he said if they want to take a day off or anything, you come and ask me if it would be all right. I was to check with him on everything or with the assistant inn-keeper in his absence.

Q. You were supposed to ask Mr. King if it was all right for a maid to take a vacation she had requested, during that period Mrs. Fitzpatrick was absent; is that right? A. Yes, sir. If they came and asked me if they could have a week off and they wanted it as their vacation, I would go down and ask Mr. King about it and he made the decision.

Q. During that approximate 13-month period when Mrs. Fitzpatrick was absent from the Inn, and you were the acting housekeeper, did any maid ask you not for a vacation, but for say a single day off? A. Yes, they would come to me and they would say, "Ruth, is it possible . . . I know that according to the [389] schedule I might have Thursday off. I need Friday. Because I have an appointment with the doctor, or dentist"

...

Q. What did you do then? A. Well, I would make the schedule and change the schedule and explain it to Mr. King that this person wanted the day off. Usually he okayed it. There was never any problem that way.

R. A. Hancock, for Employer, Re-direct.

Q. Did you give any maid requesting a single day off, during the absence of Mrs. Fitzpatrick, did you give her the day off without consulting with Mr. King? A. No, sir. Usually they would, if they knew that they had a dentist appointment or doctor's appointment or the child had something in school that they wanted the time off, they usually told you a couple of weeks in advance of when the schedule was made up, or Mr. King okayed it or went over with you, you can explain why their day had been changed with the other person. Sometimes they would ask the other girl if they could switch with them. They would see if it would be all right.

Q. Say between February of '73 and the election, were there occasions when you yourself personally cleaned rooms from start to finish? [390] A. Yes, sir, there have been.

Q. During that same period, in an average week, how many rooms did you so clean from start to finish? A. Well, it would vary according to what the week was like.

Q. Right. On an average, how much would it be? A. Well, I might clean five or six rooms today and none tomorrow.

Q. But say during the weeks time from February of '73 and the election? A. I might not ...

Q. How many rooms would you clean on the average? A. A lot of times I didn't clean just one room. I would clean part of it.

Q. Right. Well, part of a room. A. Well, every day I would do those things if it's time to be done. I would give the maid a helping hand.

Q. On how many rooms? A. I would say 12, 14.

Q. During a day or a week? A. Well, like the days that we get the linen back, you don't have the time but the other days you would have extra time and if there wasn't anything to do, you'd go in and help somebody. You make a [391] bed or go through and strip beds, especially if you had two girls that hadn't ...

R. A. Hancock, for Employer, Re-direct.

Q. Those would be occasions for you to clean a room yourself, but during an average week between February '73 and the election, how many rooms would you clean? A. Oh, it might average three or four a day.

Q. Three to four a day? A. Just depends on the week. You don't always know what you're going to come up with.

Q. Right. Now before February of '73, when you were the acting housekeeper and the absence of the now housekeeper, did you clean rooms then? A. Yes, I did, sir. I am not one that can just sit ...

Q. I understand. On the average, during that latter period, how many rooms a week would you clean? A. May I finish answering? I'm not one that can just stay put. When I know there are things that can be done you've got new girls, you go ahead and help them.

Q. Very well. Can you say during the period in the absence of Mrs. Kirkpatrick, how many rooms a week would you clean on the average?

[392] Mr. Lipsitz: Mr. Hearing Officer, a week or day? Earlier the question was about a day.

Hearing Officer: I have been asking her according to the week. She answered as to day.

Q. (By the Hearing Officer) However you want to answer that; day or week. A. Oh, it would probably be 8 or 10 rooms a week. I may be might not complete a room I would just do things in the room. Possibly even more than that. It just depends on, as I say, you just don't know.

Q. I understand. This is your estimate of the number? A. Yes.

Q. That is 8 rooms per week? A. Week.

Q. Now, the decision to layoff Martha Tarnowski, whose decision was that? A. Mr. King.

R. A. Hancock, for Employer, Re-direct.

Q. Did Mr. King tell you that that was his decision? A. Yes, he did.

Q. And then did you in turn tell Mrs. Tarnowski that that was the decision? A. I told Mrs. Tarnowski that until we are picking up, since she didn't have a phone where we would be able to call her on a daily basis if we had [393] extra work to be had, we would have to temporarily lay her off.

Q. So you told her? A. I told her, yes.

Q. When was that? A. Well, it was right after Christmas, I believe.

Q. What year? A. Last Year.

Q. '72? A. It was around Christmas of . . . Christmas of '72; that's right.

Hearing Officer: I have nothing further to ask this witness. Anything further, Mr. Drenning?

RE-DIRECT EXAMINATION:

Q. (By Mr. Drenning) Mrs. Hancock, in response to the Hearing Officer's questions about numbers of rooms cleaned, were your answers dealing with those rooms that you cleaned, from start to finish or rooms that you helped with or rooms that you had just did a little in? A. Well, I would help with, you know, you go into the room and you strip two beds and maybe go to the next room and strip two beds. You go down the line and you might strip a dozen rooms. That gives the girl a helping hand, and sometimes I would make the [394] bed, more or less put it altogether. I don't know how else you put it. Sometimes I'd complete a room; possibly go in and did the bathrooms, all 14 rooms.

Q. When you answered, I think you said that since Mrs. Fitzpatrick had been back, you cleaned three to four rooms on the average per day? A. Per day.

Q. What I'm asking, does that mean you clean those

R. A. Hancock, for Employer, Re-cross.

rooms on the average, from start to finish but if you added to that rooms that you correct, that that would boost the number? A. Yes, it would, if I added those.

Q. Rooms that you clean are three or four a day, rooms essentially that you clean start to finish? A. Yes.

Q. How many rooms would you estimate that you take directive action on the average since Mrs. Fitzpatrick has been back? A. You might stop and do a dozen rooms.

Q. Can you make an estimate as to average per day or per week if that is easier? A. I would say probably a dozen rooms a day.

Q. A dozen rooms a day? A. Yes.

Mr. Drenning: No more questions.

[395] RE-CROSS EXAMINATION:

Q. (By Mr. Lipsitz) Mrs. Hancock, on the day the linen is not being counted, the other days, every day, do you make a room up from beginning to end, or are there days when you don't make a room from beginning to end? A. Just depends on what the work is there. I may do it today and not tomorrow.

Q. So you don't do it on a daily basis? A. I can't give an answer. That is not the way it is.

Q. You do not do it on a daily basis, then; isn't that correct? A. I did it as the need, as needed.

Q. Nobody is arguing about your conscientiousness or ability to work. A. I can't give you any other answer.

Q. Am I stating correctly that you do not make up rooms from beginning to end on a daily basis? A. Just depends what work is there. I can't give you an answer.

Q. Now, I will ask it another way. Every day that you work, is there work for you to do, making, cleaning up a room from beginning to end? A. Yes, I could go in and do it.

R. A. Hancock, for Employer, Re-cross.

[396] Q. Do you in fact every day of work, make up a room from beginning to end? A. When the girls are not ...

Q. I'm talking about from February to the date of the election. In fact, did you, every day, go in and make up a room from beginning to end? A. Yes, I have.

Q. Every day? A. I might have made three today and none tomorrow.

Q. The answer to my question: some of the days you didn't do any rooms; isn't that correct? A. I told you in the beginning, sir ...

Q. Thank you for finally telling me again. Mrs. Hancock, when you told the maids they could leave earlier because they were sick, isn't it a fact that in your statement to the Board of May 13th, 1973, now referring, and I'm going to do what the Hearing Officer asked me to do before, and at Page 6, starting on the bottom of Page 5, that you said, "If a maid is to be out sick she would call me or Mrs. Fitzpatrick and say she is not coming in. I've told maids they could leave early, after they have asked me, because they are sick." Is that an accurate statement? A. I have did that, but I said ... now, wait a minute.

Q. Now, please. Why do you do it all the time. Is [397] that not an accurate statement? A. I did before February of '73.

Q. What you're telling me is that you didn't do it after February of '73, even though you made the statement in May of '73? A. He asked me if I ever had did it. Naturally I had, since I've been employed, so I said, "Yes."

Q. Are you telling me that you are absolutely certain that since Mrs. Fitzpatrick came back, that you never told one thing to a maid to go home early because she was sick? A. I told you just a few minutes ago, just a few weeks ago I did.

Q. I'm sorry. Between February and the date of the election? A. I'm not certain that I did.

R. A. Hancock, for Employer, Re-cross.

Q. You're not certain that you didn't? A. Not certain.

Q. Did you receive instructions from Mrs. Fitzpatrick, from the period of the date of election to a couple of weeks ago that you could tell the maids to go home? A. I mean she couldn't tell me . . .

Q. Should or should not? A. She never told me.

[398] Q. You have had the same authority since June 13th to the present time that you had before to tell the maids to go home? A. As far as sickness.

Q. As far as sickness? A. Yes.

Mr. Lipsitz: That's all. I'd like to offer this for the purpose, that part of it reveals protestations, there were things crossed off.

The statements I cross-examined on show no corrections, and I think it goes to the credibility in terms of the testimony.

Hearing Officer: You want to introduce Petitioner's 2 for that purpose?

Mr. Lipsitz: Yes.

Hearing Officer: Any objection?

Mr. Drenning: No objection.

Mr. Newsome: No objection.

Hearing Officer: Petitioner's 2 is received for that purpose.

(The document above-referred to, heretofore marked Petitioner's Exhibit 2, was received into evidence.)

RE-CROSS EXAMINATION:

Q. (By Mr. Newsome) In response to the Hearing [399] Officer's question, Mr. King told you to notify Tarnowski . . . what is the name, concerning her layoff? A. Martha Tarnowski.

R. A. Hancock, for Employer, Re-cross.

Q. When you notified her, did you tell Mrs. Tarnowski Mr. King was laying her off or did you notify her that you were? A. I explained to Martha Tarnowski that Mr. King had asked me to tell her it was a temporary layoff.

Q. Next question. You don't have a regular assignment of rooms; you do this on a voluntary basis at your own discretion? A. Depending on what ...

Q. Just yes or no? A. Yes.

Mr. Newsome: No further questions.

Mr. Lipsitz: Nothing further.

Mr. Drenning: Nothing further.

Hearing Officer: You're excused. Thank you very much.

(Witness excused.)

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record. Please call your next witness.

Mr. Newsome: May I request that a copy of the [400] exhibit, Petitioner's 2 be introduced and the original returned?

Mr. Lipsitz: No objection.

Hearing Officer: With the consent of the parties.

Mr. Drenning: I have no objection.

Hearing Officer: All right. It will be substituted.

A. Degleris, for Employer, Direct.

Whereupon,

ANTHONY DEGLERIS was called as a witness by and on behalf of the Employer and, after being first duly sworn, was examined and testified as follows:

Hearing Officer: Give your name to the Reporter.

The Witness: Anthony Degleris.

DIRECT EXAMINATION:

Q. (By Mr. Drenning) You are employed by the Federated Home and Mortgage? A. Yes.

Q. As part of your job, what is your job at Federated? A. I am in charge of operations. I'm Senior Vice-President of Operations.

Q. Do part of your duties include the supervision and management of Dunkirk-Fredonia Holiday Inn? [401] A. Yes; that's correct.

Q. Would you describe the circumstances surrounding the return of Mrs. Fitzpatrick to the Dunkirk-Holiday Inn in February of 1973? A. Yes, sir. Around October of 1972, October, early October, I received a report from Mr. King, our innkeeper.

Q. A little louder, if you will. A. I received a report from Mr. King, our innkeeper, to the effect that there were problems, he had problems with the housekeeping department. I asked him to evaluate the situation and I asked him to report back to me. He did on a number of occasions and I kept on asking as to the progress, as to whether there was any progress, specific progress. Around December or just before the holidays, just before Christmas, I stopped at the Inn on one of my regular visits and I had the opportunity once more to discuss the matter with Mr. King in detail and it was my evaluation at the time that it dictated to me that I should send an experienced housekeeper to Dunkirk to take over, and run

A. Degleris, for Employer, Direct.

the department smoothly. Of course I had to make other arrangements and had to find an experienced housekeeper and there were a few in our chain, but they were not available at a [402] moment's notice. I had to make other arrangements with our other innkeepers and eventually I decided to make such arrangements if Mrs. Fitzpatrick would go back to Dunkirk as a housekeeper. Number one, she had experience and number two, because she had been active in the opening of the Inn and knew the employees, knew the type of employees.

Q. Did you talk to Mrs. Fitzpatrick now before she was assigned, reassigned, to the Holiday Inn in Dunkirk? A. No, that is not . . . I mean, that is not my practice. Usually I check with the innkeeper because the innkeeper is responsible and knows the circumstances. I can't pull any employee from his operation without asking.

Q. That would be the innkeeper that she was assigned to before she came to Dunkirk? A. Yes, because other arrangements had to be made.

Q. Did you talk to the innkeeper, Mrs. Fitzpatrick reported to in Dunkirk? A. Correct.

Mr. Lipsitz: I object to any conversation he had with innkeepers.

Mr. Drenning: Okay. Withdraw it.

Q. (By Mr. Drenning) Did you permanently assign [403] Mrs. Fitzpatrick? A. At the time she was, my decision was to send her there to take over on a permanent basis.

Q. Did you contemplate, today, do you have any notion of sending her to another Holiday Inn? A. No, sir.

Mr. Drenning: No further questions.

Mr. Lipsitz: I have no cross examination.

Mr. Newsome: No questions.

A. Perisi, for Petitioner. Direct.

Mr. Drenning: Mr. Hearing Officer, I have no additional proof on behalf of the Employer.

Hearing Officer: Very well. Off the record.

(Discussion off the record.)

Hearing Officer: Back on the record. Call your witness, Mr. Lipsitz.

Whereupon,

ANN PERISI was called as a witness by and on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

Hearing Officer: Your full name for the Reporter?

The Witness: Ann Perisi.

DIRECT EXAMINATION:

[404] Q. (By Mr. Lipsitz) Is it Miss? A. Yes, sir.

Q. Miss Perisi, were you at one time employed by the Holiday Inn in Dunkirk? A. Yes, I was.

Q. Are you presently employed there? A. No, I am not.

Q. During what period of time were you employed there? A. From July 1971 until October 7th, 1972.

Q. In what capacity were you employed? A. I was a dining room waitress, banquet waitress and at times I was a cocktail waitress.

Q. Were you on a particular shift or did you have particular hours assigned to you as a dining room waitress? A. Always worked evenings. I worked part-time but not always the same nights.

Q. In other words you didn't work every night during the week? A. No, I did not.

Q. How many nights a week on the average did you work as a dining room waitress; what were the ranges, put it that way? A. Anywhere from two to five.

A. Perisi, for Petitioner, Direct.

[405] Q. At night time meant what; dinner hour to the end of dinner hour? A. Yes, sir, 5:00 to 10:00.

Q. How did you learn what your hours of employment were to be? A. There was a schedule posted in the kitchen.

Q. When did you first observe that schedule, when you first came to work or sometime thereafter? A. When I first came to work.

Q. Did it ever change? A. At times, yes.

Q. Do you know, and I'm asking you if you know, meaning of your own knowledge, how the changes were placed on this schedule? A. You mean whoever did the scheduling?

Q. Who did the scheduling? A. Mrs. Nichols.

Q. What is her first name? A. Sandy.

Q. Sandra? A. Sandra.

Q. Did you ever go to her about changing the schedule? A. Yes, I did.

Q. I suppose, sitting here you can't recall a date [406] when you went to her, or maybe you can? A. I went to her in May.

Q. In when? A. May of 1972, about a week that I wanted off. She said she would verify it with Mr. King.

Q. With Mr. King? A. Yes.

Q. And did she subsequently come back to you? A. Yes, she did. She told me it would be all right.

Q. Was this a paid vacation or just a week off from work? A. Just a week off.

Q. Did you have any other occasion yourself to talk to her about a change in your schedule? A. Yes, I did in September of 1972, I was going to be student-teaching.

Q. Excuse me. Where is this? A. Student-teaching. . . where was I student-teaching? In Angola.

Q. Angola, New York? A. Yes.

Q. Yes. A. I told her that I would only be available on

A. Perisi, for Petitioner, Direct.

Friday and Saturday nights and if that was agreeable [407] with her, I'd work those nights. If not, I wouldn't work at all.

Q. What did she say? A. She said it was fine.

Q. What happened to your schedule as a result? A. I only worked on Friday and Saturday.

Q. Any other such examples or incidents involving you and a change of schedule? A. Yes, if I wanted a particular day off, I wanted my days off switched; say they gave me Monday and Wednesday. I would go to her and could I have Tuesday and Wednesday. She would usually go to the other girls and say would someone work a day for me and she would switch the days.

Q. You made that request to her? A. Yes, I did.

Q. Does that about exhaust your recollection of such incidents? A. Yes.

Q. Do you know whether in fact other waitresses made similar requests for scheduling to her? A. Yes, I do.

Q. What is the basis of your knowledge? A. I would be standing in the kitchen and when she came in and she was talking to a girl and she changed [408] the schedule.

Q. Did that happen once or more than once? A. I would say more than once.

Q. Now, when you first came to work, were you introduced. . . withdraw that. Was Nichols working then? A. Yes, she was.

Q. Were you introduced to her or just sort of got to know her? A. I knew her.

Q. Oh, you knew her? A. I had previously met her.

Q. Another job? A. Yes, sir.

Q. Nothing to do with the Holiday Inn? A. No.

Q. Who happened to interview you for this job? A. Mr. King.

Q. There came a time, evidently, when you stopped working there in October of 1972; is that correct? A. Yes, sir.

A. Perisi, for Petitioner, Direct.

Q. Did you quit or were you terminated in another fashion? A. I was fired.

Q. Who fired you? [409] A. I don't know, directly. I only got it from hearsay.

Q. Pardon me? A. I only got it from hearsay, from talking to someone else.

Q. You learned that you weren't going to work there anymore, I take it? A. Yes.

Q. Did you get this indirectly or did somebody tell you? A. I got that indirectly.

Q. Who told you that you were going to be fired? A. The morning after I called in sick.

Q. All right. We had better back up. A. Yes.

Q. Were you scheduled to work on October 7th, 1972? A. Yes, I was.

Q. Do you recall what day of the week it was? A. It was a Saturday night.

Q. Is that when you were on your Friday to Saturday schedule? A. Yes, it was.

Q. Because of your request, based upon teaching; is that it? [410] A. Yes.

Q. Were you on evening shift? A. Yes.

Q. What happened on October 7th? A. I called in sick.

Q. Who did you give the message to? A. Mrs. Sam.

Q. Was she the hostess? A. Cashier, yes, sir.

Q. On duty then? A. Yes, sir.

Q. Was it before or after 5:00? A. Before 5:00.

Q. About what time? A. Five minutes to 5:00.

Q. That was not very prompt notice? A. No, it wasn't.

Q. It was a Saturday night? A. It was a Saturday night.

Q. When were you next scheduled to report for work? A. The following Friday.

Q. Did you come into work? A. No, I did not report because I had come in on Sunday, the 8th.

A. Terisi, for Petitioner, Direct.

[411] Q. Why did you come in on Sunday, the 8th? A. I received a phone call from one of the waitresses. She said that I was in trouble, that I was off the schedule and that I had better go and see about it.

Q. As a result of that you went in Sunday, the 8th, even though you weren't scheduled to work? A. Yes.

Q. Who did you speak to? A. Mrs. Nichois?

Q. Mrs. Sandra Nichols? A. Yes.

Q. Did you have a conversation? A. Yes.

Q. What did you say to her and what did she say to you? A. I looked at the schedule and saw that I was off. I went and found her and asked her why. She said it was an obvious reason. I had called in sick on a very busy night. I said, "Do I deserve this for just calling in on just one busy night?" She said that that was one, that there were other reasons, and "I do not want to talk about it. You deserve what you got." And she walked away from me.

Q. What was your observation about your not being on [412] the schedule? You say you looked at the schedule. What did you see on there that indicated you weren't on it? A. There was a line drawn through.

Q. Through what? A. Through the scheduled week, Saturday to Friday, days.

Q. A line through what? A. My name, and all the way across.

Q. Did you try subsequently to speak to Mr. King? A. Not until a week from that Friday.

Q. So that subsequently you spoke to him; is that it? A. Yes, I did.

Q. Where did you speak to him? A. I spoke to him in his office.

Q. In person? A. Yes.

Q. Did you have a conversation with him? A. Yes, I did.

A. Perisi, for Petitioner, Cross.

Q. Tell us what you said and what he said? A. I went in there to return my uniforms. I was upset because no one had told me to my face about this. He said if I had been home I would have received Sandy's phone call telling me that I was [413] fired.

Q. Did he say anything else? A. He told me that he wouldn't give me my job back; and he would stand by her, that I was fired.

Mr. Lipsitz: No further questions.

CROSS EXAMINATION:

Q. (By Mr. Drenning) This incident about your meeting with Mr. King and events surrounding your termination; do you know whether Mrs. Nichols had consulted with Mr. King before? A. No, I don't know.

Q. Do you know how the decision was made as to the termination? A. No, I don't.

Q. Mr. King had told you if you had been home to receive the call you would have been informed, or something to that effect? A. Yes.

Q. You don't know of your own knowledge what the conversation may have been between Mrs. Nichols and Mr. King relative to your termination? A. No, I don't. I was not there.

Q. Did waitresses often, Mrs. Perisi, make a definite schedule. That is to say, get another waitress to cover on a day off for school or something [414] like that? A. Not unless they consulted Mrs. Nichols, and then they would do it.

Q. Do you know what Mrs. Nichols did; did she talk with Mr. King, do you know? A. No, I don't know that.

Mr. Drenning: No more questions.

CROSS EXAMINATION:

Q. (By Mr. Newsome) When you spoke to Mr. King, Miss

A. Perisi, for Petitioner, Cross.

Perisi, did you ask him if Sandra had authority to fire you? A. I don't know if I used those exact words.

Q. Did you use words to that effect? A. I don't really recall.

Q. Did you present a statement to the Board Agent from the National Labor Relations Board? A. Yes, I did.

Q. Who drafted the statement, you or did he? A. The man.

Q. I beg your pardon? A. Whoever it was that interviewed me.

Mr. Newsome: Would you mark this, please?

(The document above-referred to was marked Regional Director's Exhibit No. 3 for identification.)

[415] CROSS EXAMINATION:

Q. (By Mr. Newsome) I show you what has been marked for identification as Board's Exhibit 3. Is this the statement you gave to the Board Agent? A. Yes.

Q. The Board Agent didn't draft this statement, did he? A. What do you mean by "draft"?

Q. Write it down? A. Yes, he did.

Q. He wrote it down? A. That is not my handwriting. That is my signature.

Hearing Officer: You were pointing to the signature?

The Witness: Yes, the signature is mine.

Q. (By Mr. Newsome) I call your attention, in any event, to the last sentence right there. Would you read it to yourself? Does that refresh your recollection? A. I don't remember saying that, sir. I really don't.

Q. You don't remember saying that? A. No, I don't.

Q. When you signed this, this statement was true and

A. Perisi, for Petitioner, Re-direct, Re-cross.

correct to the best of your knowledge at that time? [416] A. Yes, it was.

Q. I'm quoting from this statement. "When I asked Mr. King if Sandy had authority to fire me he said, yes and he would back her up." Is that a direct quote from the statement? A. Yes, it is.

Q. But at this time you don't remember saying it? A. No.

Mr. Newsome: No further questions.

RE-DIRECT EXAMINATION:

Q. (By Mr. Lipsitz) You said this wasn't in your handwriting? A. No, it isn't.

Q. You said the Board Agent. Are you certain it wasn't Mr. Fromm from the Meatcutters Union? A. Yes, I think that's what it was.

Q. At the time did Mr. Fromm go to you and ask you if you had any information about Mrs. Nichols and whether she was a boss or not? A. Yes.

Q. Didn't he then ask some questions and write out a statement and ask you to sign it? A. Yes.

Q. It wasn't a National Labor Relations Board Representative; it was a Union Representative? [417] A. Yes, that's right.

Mr. Lipsitz: That's all.

RE-CROSS EXAMINATION:

Q. (By Mr. Drenning) With respect again, Mrs. Peresi, when you came in to talk to Mr. King subsequent to your termination, do you recall if Mr. King indicated or somehow suggested to you that he placed the phone call and not Mrs. Nichols, the evening you were to work? A. No. All I remember him saying is that. . . I had come in with a complaint, why hadn't someone had the decency to tell me to my face. He

P. Rose, for Petitioner, Direct.

said, "If you had been home, you would have received Sandra's call to fire you."

Q. He indicated to you that Sandy placed the call and not himself? A. Yes, he did.

Mr. Drenning: No more questions.

Mr. Lipsitz: Nothing further.

Mr. Newsome: No more questions.

Hearing Officer: Thank you, Miss Perisi, you're excused.

(Witness excused.)

* * *

[419] PATRICIA ROSE was called as a Witness by and on behalf of the Petitioner and, after being first duly sworn, was examined and testified as follows:

Hearing Officer: Give your name to the Court Reporter, please.

The Witness: Patricia Rose.

DIRECT EXAMINATION:

Q. (By Mr. Lipsitz) Now, is it Miss or Mrs.? A. Mrs.

Q. Mrs. Rose, are you presently employed at Holiday Inn? A. Yes.

Q. When did you become employed? A. I have been there 16 months. It was the end of May, 1972.

Q. In what capacity? A. Waitress.

Q. Have you been on the same or different shifts since that time? A. Well, for 13 months I came in every day at 5:30 and now I come in at 7:00, but that is the [420] only difference.

Q. That is the evening? A. No, not evenings.

Q. Oh, pardon me. A. 7:00 in the morning.

P. Rose, for Petitioner, Direct.

Q. Oh, 7:00 in the morning. How recently is that? A. Three months.

Q. During the time that you were on 5:30, that was what, until the ending of work, the end of the dinner hour? A. No, that was 5:30 in the morning.

Q. 5:30 A.M. is all morning work? A. Yes.

Q. All right. How long did you work after you came in at 5:30 in the morning? A. Supposed to get out at 1:30. Sometimes it was a little later.

Q. The normal time? A. Yes.

Q. Since then you have been coming in at 7:00? A. Yes.

Q. I take it that is work in the dining room? A. Yes.

Q. In addition to working in the dining room, do you do any other waitress work? [421] A. I work parties, sometimes.

Q. Do you work in the cocktail lounge? A. No.

Q. Not during those hours? A. No, not at all.

Q. Were you interviewed before you were employed? A. Yes.

Q. Who interviewed you? A. Sandy Nichols.

Q. Do you recall, in the interview process, what was discussed, what forms or applications you had to fill out, tell us what you recall? A. I don't remember making out any application. I may have later, but I don't remember then, and she just talked to me.

Q. Well, she must have talked to you about other than the weather, I take it? A. She asked me if I had any experience and she asked me about what hours I'd like to work, and that was really about it.

Q. Did she discuss with you or did you discuss with her rates of pay and tips? A. She said something to me about Susie, my sister-in-law has probably already told you what the pay is. I said, yes.

[422] Q. She mentioned the subject, that you already knew about it? A. Yes.

P. Rose, for Petitioner, Direct.

Q. Did she tell you what other benefits there were, if any, such as insurance or vacation or anything of that character? A. I don't think she did, I can't remember.

Q. You gave us your best recollection now of what was said during the interview? A. Yes.

Q. Before the interview was concluded or before you left, did you learn anything about whether or not you were going to be hired? A. Yes, she hired me.

Q. What did she tell you? A. She told me to come in Friday morning at 5:30. She gave me a couple of menus to look at and a skirt.

Q. How long after the interview was it that you were told to come in? A. Two days.

Q. Two days. Did you report at that time? A. Yes.

Q. Did she give you anything to wear? A. She gave me a skirt.

Q. A particular kind of skirt? [423] A. Well, it is our uniform skirt.

Q. Does the whole uniform consist of the skirt or is there. . . A. No, it is a skirt and vest, but we have to provide the blouse, but she didn't have the vest that day.

Q. The blouse is supplied by the waitress? A. Yes.

Q. So she gave you all the uniform that was available? A. Yes.

Q. When you reported for work, either this Friday or thereafter, was there a schedule that you read, providing for your hours of employment? A. Yes, there's a schedule on the wall every week.

Q. During the period of your employment, has it been changed from time-to-time? A. Yes.

Q. Do you know who makes the changes? A. Now or then?

Q. Actually I'm asking my questions as of the date of the election and before? A. Sandy did.

P. Rose, for Petitioner, Direct.

Q. Did you ever ask to have your schedule changed? A. You mean like a day off?

Q. Anything? [424] A. Gee, I'm sure I did.

Q. As a matter of fact you asked her for more than a day off on one occasion, did you not? A. Yes, I asked for two weeks off.

Q. When was that? A. In April.

Q. What year? A. '73.

Q. Not so long ago, in other words; right? A. Yes.

Q. Would you tell us what you said to her and what she said to you about this request? A. Well, I didn't ask her too far in advance and she told me she'd see what she could do. Later in the day she started making out the schedule so she could arrange it so I was off.

Q. Did she in fact arrange for your taking the time off? A. Yes, took me off the schedule.

Q. For how long? A. Two weeks.

Q. What? A. Two weeks.

Q. Do you know an employee, a person by the name of Lois Zelinski? [425] A. Yes.

Q. Where did you know her? A. She worked at the Holiday Inn.

Q. In what capacity? A. Waitress.

Q. So do you recall for what period of time? A. I'm not sure. It wasn't too long. Maybe a couple of months or something.

Q. In terms of your employment, the beginning, the middle, toward the election time, if you know? A. Well, I started in May of '72 and this is probably about September of '72 that she started.

Q. Did she work during the same hours with you? A. Yes.

Q. Did there come a time when she no longer worked there? A. Yes.

P. Rose, for Petitioner, Direct.

Q. Did you learn from anybody why she no longer worked there? A. Sandy told me that she fired her.

Mr. Drenning: I'm going to object to the question and answer and ask that they both be stricken.

Mr. Lipsitz: I think the question is proper. I think we will get at the answers in a proper way. [426] It sort of anticipated the next question.

Hearing Officer: Let's hear the next question.

Q. (By Mr. Lipsitz) Did you learn that she was no longer working, Lois? A. Yes, I did.

Q. How did you learn that? A. Sandy told me.

Q. Sandra Nichols? A. Nichols.

Q. What did Sandra Nichols tell you? Just a minute. There may be an objection to the question.

Mr. Drenning: I withdraw the objection.

Q. (By Mr. Lipsitz) What did Sandra Nichols tell you? A. She told me. . . well, Lois had been late that day. She called up with an excuse and Sandy told me that she told Lois never mind coming in, just bring in your uniform.

Q. Now, did there come a time when you saw any notice in the kitchen or in the vicinity of the dining room in which the waitresses and other personnel were told about being late?

A. Yes.

Q. Where did you see such a notice? A. It was hung in the kitchen.

[427] Q. You didn't take it and keep it, did you? A. No.

Q. All right. Would you tell us your best recollection as to what the notice stated? A. It said: "To all waitresses and bus boys. All employees must be at work by ten minutes to 7:00 or their employment will be terminated." Or words to that effect. I know it was ten minutes to 7:00, and something about being terminated.

P. Rose, for Petitioner, Direct.

Q. Was anybody's name on that, or initials, to your best recollection now? A. Oh, I'm sure there weren't initials on it and I think Sandy signed it. She signed most of them. But I can't say for sure. I can't say for sure.

Q. Were there ever any notices that you saw that Sandy signed or had her name on? A. Yes.

Q. What? A. Maybe that we were going to be busy that weekend and we'd have to work, and she would sign things like that.

Q. Where did you see notices such as that? A. Hanging in the kitchen.

Q. On a bulletin board or some location? A. Yes, hanging over the ice cream machine.

[428] Q. Over the what? A. Over the ice cream machine.

Q. Did there come a time when you saw any advertisement in the Dunkirk Newspaper about waitresses? A. Yes.

Q. Do you recall when that was? A. It was the end of August or beginning of September of '72.

Q. Is there more than one Dunkirk Paper or just one Dunkirk Paper, daily paper? A. Just one.

Q. Did you clip the advertisement? A. No.

Q. All right. Do you recall . . . tell us your best recollection of the content of that advertisement? A. It said: "Waitresses wanted Holiday Inn, Bennett Road. Contact Mr. King or Mrs. Nichols."

Q. Have you ever talked to Sandra Nichols about. . . withdraw that.

Mr. Lipsitz: I have no further questions.

Mr. Drenning: Did the witness give an affidavit or statement to the Board?

Mr. Newsome: Yes. This is Pat?

Mr. Lipsitz: Pat.

P. Rose, for Petitioner, Cross.

The Witness: Yes.

[429] Mr. Drenning: Could I have a moment to review these, Mr. Hearing Officer?

Hearing Officer: Take five minutes, please. Off the record.

(Discussion off the record.)

Hearing Officer: On the record, please.

CROSS EXAMINATION:

Q. (By Mr. Drenning) Mrs. Rose, you gave a statement to the Board Agent in this matter; do you recall that? A. Yes.

Q. I don't think we need to mark it, but did you say to the Board Agent when you talked to him, that Mrs. Nichols "When I said I wouldn't mind coming in at 5:30 A.M. Mrs. Nichols got excited." A. Yes, because it's hard to find a 5:30 job applicant.

Q. Have additional girls been hired for the 5:30 schedule since you have been there? A. No.

Q. But, they are hard to come by, as far as you know? A. Then we had one coming, five days a week at 5:30. Now, we take turns.

Q. You stated you indicated your ability to come [430] in at 5:30 in the morning and she was enthusiastic; she was pleased to find you? A. Yes.

Q. People to work that schedule are difficult to come by? A. Yes, every day.

Q. Do you know if she talked to Mr. King about your hiring? A. No, I don't.

Q. When did you first see Mr. King when you started? A. When I was leaving there.

Q. When was that? A. When I started, on the way out, Sandy met him outside the office and she introduced me to him and Kevin Porter, who was assistant innkeeper.

Q. Where did the conversation take place? A. Right outside Mr. King's office.

P. Rose, for Petitioner, Cross.

Q. Do you recall how long it was? A. All I did was meet him.

Q. Did Mr. King say anything to you? A. He said, "Hello," that was about it.

Q. Did Sandy say something like. . . A. She said, "This is our new 5:30 girl." I remember that.

[431] Q. Do you remember Mr. King's reaction? A. No.

Q. Was he relieved? A. I don't know.

Q. Was he happy? A. I guess.

Q. Had anybody been working that 5:30 shift before? A. Yes.

Q. Were you hired because of replacements being required or additional? A. I think I was replacing the girl who had been working it. She left that Friday that I started. That was her last day.

Q. Did Mrs. Nichols tell you somebody was needed immediately when she talked with you? A. She told me to come in Friday; this was on a Wednesday.

Q. Your sister had been a prior employee of the Inn, had she not? A. My sister-in-law.

Q. Sister-in-law. To your knowledge, did she recommend you to anybody at the Holiday Inn? A. Sandy.

Q. Do you know if she ever talked with anybody else? [432] A. No, I don't.

Q. Is it, to your knowledge, customary for one employee at the Inn to recommend another candidate for employment? A. Yes, it is.

Q. Might that person be hired without talking to Mr. King? A. I guess they might.

Q. With respect to the notice about tardiness. A. Yes.

Q. What was your testimony again with respect to it being initialed or signed? A. I don't think it was initialed, but I can't say for sure.

S. Rose, for Petitioner, Direct.

Q. Were notices from time to time, put up in the kitchen?
A. Yes.

Q. By the chef? A. I suppose he might have. Usually from either Mr. King or from Sandy.

Mr. Drenning: No more questions.

Mr. Newsome: No questions.

Mr. Lipsitz: No questions.

Hearing Officer: Thank you. You are excused.

(Witness excused)

[433] Mr. Lipsitz: Susanne Rose.

Whereupon,

SUSANNE ROSE was called as a witness by and on behalf of the Petitioner and, after being first duly sworn, was examined and testified as follows:

Hearing Officer: Give your name to the Court Reporter.

The Witness: Susanne Rose.

DIRECT EXAMINATION:

Q. (By Mr. Lipsitz) Are you employed at the Holiday Inn? A. Yes.

Q. In what capacity? A. Waitress.

Q. How long have you been employed as a waitress? A. A little more than two years.

Q. Have you worked the same. . . withdraw that. Where do you work as a waitress at the Holiday Inn? A. Just work at the Holiday Inn.

Q. What place at the Holiday Inn? A. The dining room. I work banquets; cocktails.

Q. Cocktail lounge, also? A. Yes.

Q. Do you have a schedule of employment hours in the

S. Rose, for Petitioner, Direct.

[434] dining room? A. Yes, normally I am a dining room waitress.

Q. What time? A. 5:00 to 10:00.

Q. That is 5:00 P.M. A. Yes.

Q. How many days a week do you work? A. As a rule, five.

Q. Has that been basically your schedule during the two years, is it? A. Yes.

Q. I take it . . . has it ever changed? A. Yes.

Q. Well, we'll get back to that in a minute. Who hired you by the way?

Mr. Drenning: I object to the question.

The Witness: Mr. King.

Mr. Lipsitz: What?

Mr. Drenning: I object to the form of the question. I don't think we have talked as to hiring. I'm focusing my objection on the use of the word "hired". You may, and I have no reluctance to a lot of questions with respect to who told her she was hired and that sort of thing.

Mr. Lipsitz: You want to make a ruling, Mr. [435] Hearing Officer?

Hearing Officer: Why don't you rephrase your question?

Q. (By Mr. Lipsitz) Who told you you were coming to work there? A. Mr. King.

Q. After that, who did . . . withdraw that. Was Sandra Nichols working there at that time? A. Yes.

Q. Did anybody introduce you to her? A. Yes. Well, I knew. . . I worked with her previously.

Q. You also had known her previous? A. Yes.

Q. When you started to work, who told you what shift you were going to work? A. Mr. King.

S. Rose, for Petitioner, Direct.

Q. When you went, the first time you came on a shift, was Sandra working; do you recall? A. She was a waitress, also.

Q. She was a waitress at that time; all right. Did there come a time after that when Sandra's job changed? A. Yes.

Q. What did it change to? A. Hostess.

Q. How did you learn about that? [436] A. She came to work and I saw her.

Q. She was no longer waiting on tables on a regular basis? A. No.

Q. After you. . . do you recall when that was? A. Not really, I don't.

Q. Was it at the beginning of the two-year period of your employment? A. No, no. It was at least a year.

Q. So it was about a year before the election, then? A. Yes.

Q. More or less? A. Yes.

Q. Now, at that time after she was there as hostess, did you ever have occasion to change your schedule or did she ever have occasion to change her schedule? A. Yes.

Q. Once or more than once? A. More than once.

Q. Tell us what you recollect about changes in the schedule? A. For different days off.

Q. Pardon me? [437] A. Like if I was scheduled to have a certain day off and I'd want a different day, I'd ask her to change it.

Q. Did she change it when you asked her? A. Yes.

Q. Did she do it then or say she'd let you know; tell us your best recollection? A. Sometimes she would change it then. Sometimes she'd have to check. It would depend on the day that I needed off. If it was a weekend, she'd have to check.

Q. Did you ever ask her for any extended time off to go away? A. Yes, I had vacation.

S. Rose, for Petitioner, Direct.

Q. You're talking about a vacation? A. Yes, I had vacations. I haven't had just extended days off.

Q. The only extended time you have had off is when you have a vacation? A. Yes, or for illness.

Q. You didn't ask her for permission to be ill, did you? A. No.

Q. Have you been off because you were ill, however? A. Yes.

[438] Q. You didn't ask her for permission to be ill, did you? A. No.

Q. Have you been off because you have been ill, however? A. Yes.

Q. In regard to the vacations, have you had one or more vacations? A. More than one.

Q. Two? A. Yes.

Q. How was that arranged? A. The first year I was sick so I took my vacation when I was sick, and the second year I just took it recently and I made arrangements with Mr. King, I think.

Q. Was Sandra no longer employed when you made arrangements for this year's vacation, or was she? A. I don't think she was, or if she was, she wasn't fixing the schedule. I really don't remember. Let me think. No, she wasn't there.

Q. You have been off because of illness, also? A. Yes.

Q. On those occasions, what did you do to report your illness? [439] A. I will call, usually to the dining room to Sandy.

Q. On other occasions when you didn't call into her, who else did you speak to? A. I would call the office.

Q. Now, did there come a time in September, 1972, when you saw or read an ad in the Dunkirk Newspaper about waitresses? A. I didn't see it, I don't think.

Q. You didn't see that? A. I don't remember seeing it.

S. Rose, for Petitioner, Direct.

Q. All right. Have you overheard other waitresses or bus boys, for that matter asking for a change in their schedule, directing their request to Sandra Nichols? A. Yes, I have.

Q. Once or more than once? A. More than once.

Q. Have you ever gone home before the end of your schedule hours of work? A. Yes.

Q. How has that been arranged? A. I would ask to go home.

Q. Who did you ask? A. Well, it would depend on who was there. When [440] Sandy was there, I used to ask her and now we check, we check . . . we have to check with the hostess and then check with the office.

Q. Now, have you worked parties? A. Yes.

Q. How do you get selected to work a party? A. I don't understand.

Q. Well. . . A. You mean who does the scheduling for the parties?

Q. How do you know you're going to work a party? Who tells you how you are selected? A. Our name is usually circled and there is some kind of mark on the schedule that says you are working parties.

Q. Is this after somebody asks you if you are interested in working a party or. . . A. No, it just. . .

Q. Do you know if you are selected to work a party at a particular time? A. Yes, you know.

Q. Who is it that tells you? A. Now?

Q. No, during the time Sandra was there? A. Usually Sandy.

Q. Who else besides Sandra? Could you tell by [441] looking at the schedule? A. Yes.

Q. Any other ways? A. That would be all.

Q. You worked the cocktail lounge? A. Yes.

Q. You don't just walk over and say, "I want to work cocktail lounge?" A. No.

S. Rose, for Petitioner, Direct.

Q. How do you get selected? A. A couple of times Sandy selected. Other times cocktail waitresses didn't show up, I would just stay over and things like that.

Q. I see. Now, did you know Ann Perisi? A. Yes.

Q. Were you present at anytime where there was any discussion regarding her being fired or being let go? A. Yes.

Q. Will you tell us who was there and what the circumstances were and what you heard being said? A. Well, I answered the phone for one, when she called.

Q. When Ann Perisi called? A. Yes.

[442] Q. When you answered the phone, what did you do? A. Gave it to Susanne.

Q. Who? A. To the hostess that was there.

Q. Then what happened? A. She told Sandy.

* * *

[443] Q. (By Mr. Lipsitz) Have I stated correctly, after the telephone call you heard a conversation with Mrs. Sam and Mrs. Nichols? A. Yes.

Q. Tell us what you had heard of the conversation? A. Mrs. Sam told her that Ann wasn't coming in and then Sandy turned and she was talking to both me and Susanne and she said, "Well, that is it, because she has been calling in." She called in before she was sick or something; I don't know. She said that she was going to be fired.

[444] Q. And did you see anything being done, with respect to the schedule after that conversation? A. Yes, she went and crossed her name off.

Q. Who was the she that crossed the name off? A. Sandy Nichols.

Q. Did you know Ricki Booth? A. Yes, I did.

Q. Is that a man or woman? A. Woman.

Q. And what was Ricki Booth's job? A. Waitress.

S. Rose, for Petitioner, Direct.

Q. Do you recall when, in terms of your employment? A. Well, she started at the same time I did.

Q. How long did she work; do you recall? A. I think she left last fall.

Q. Meaning the fall of '72? A. Yes.

Q. She wasn't there for the election then? A. No.

Q. Did she quit or was she let go, if you know? A. She was fired.

Q. How did you learn that? A. She told me and Sandy told me.

Q. Confine yourself to what Sandy told you. What did Sandy tell you?

[445] Mr. Drenning: Same objection, Mr. Hearing Officer.

Hearing Officer: Will you restate that question?

Mr. Lipsitz: I can only state it in the same terms.

Q. (By Mr. Lipsitz) Respecting what I just asked you, what did Sandra Nichols tell you about Ricki Booth?

Mr. Drenning: Sorry, I misunderstood the question. I will withdraw the objection.

Hearing Officer: Okay. You may answer.

The Witness: Sandy and Ricki and I were all pretty good friends. Sandy told me she didn't want to fire Ricki because they were such good friends. Mr. King told her it was her job to fire her.

Q. (By Mr. Lipsitz) That was what Sandra told you? A. Yes.

Q. Was the problem with Ricki Booth, whether treated properly or improperly, I'm not interested, but is there some cause to what happened? A. Yes.

Q. What was it? Is this embarrassing? A. Well, no. She was going out with another employee.

S. Rose, for Petitioner, Cross.

[446] Q. Do you remember whether or not when you heard Sandra Nichols talking with Sam, that earlier that day, if Sandra had, in your presence, made a telephone call to Ann, which was unsuccessful? A. Yes, she did, I'm pretty sure. I couldn't swear to it, but I'm pretty sure that she did.

Mr. Lipsitz: No further questions of the witness.

* * *

CROSS EXAMINATION:

Q. (By Mr. Drenning) Mrs. Rose, have you ever acted as a hostess-cashier? A. Yes.

Q. When was the most recent occasion? A. A week ago Wednesday.

Q. Would you speak up, please? A. A week ago Wednesday.

[447] Q. Just for the one day? A. Yes.

Q. Before that? A. Oh, last winter.

Q. Last winter, that would be before the election? A. Yes.

Q. How long did you act as hostess-cashier? A. It would be just like for one night or something, to fill in if somebody called in sick or if Sandy worked all day, so she wouldn't have to work 12 hours or something.

Q. When you say if somebody called in sick, you mean other hostesses or waitresses? A. Yes, hostesses.

Q. Was it necessary to make adjustments in the schedule when you acted as hostess? A. No.

Q. It was preset, if you know? A. What do you mean?

Q. When you were acting as hostess, at anytime was it necessary for you to make adjustments in those schedules; did somebody call in sick to you? A. No. When I was hostess, did anybody call in sick? No.

[448] Q. Did anybody ask to go home early? A. Yes.

Q. What did you say? A. I had to check.

S. Rose, for Petitioner, Cross.

Q. With whom? A. With whoever is there.

Q. Well, who? A. Back a week ago Wednesday it was Mr. Killion. Prior to that when I was doing it, if they would ask to go after 9:30, they could go because after that actually there wouldn't be anymore business unless the Inn was full or something. But, you see, when I was doing it, I worked, like I was the 3:00 o'clock girl, I was through at 8:00. That is when I take over as hostess and Sandy could leave, so I'm actually the one who could have gone early.

Q. Then, you would have become under those circumstances, the hostess-cashier in place of Sandy, Mrs. Nichols?

A. Right.

Q. On those occasions how many girls, waitresses remain on duty with you? A. Three or four.

Q. Three or four waitresses? A. Most of the time. It was winter.

Q. What time of day are we talking about? [449] A. 5:00 to 10:00 shift.

Q. 5:00 to 10:00 shift? A. Yes.

Q. What time of day would it be, Mrs. Nichols left you to become hostess-cashier? A. Depending on the day. It wouldn't be a certain time or anything.

Q. Generally 8:00 o'clock; 9:00 o'clock? A. No, 7:00 or 8:00.

Q. 7:00 or 8:00? A. Yes.

Q. Did it ever become slow when Mrs. Nichols left; waitresses standing around not doing much? A. Yes.

Q. Did they ask to go home early? A. Not me.

Q. Did you decide who was to go home and who was to stay? A. No. See, they had to stay in until 9:00. They had to stay four hours before they could leave.

Q. How about after 9:00 o'clock, was it expected that they remain until all the customers had been served? A. Until 10:00.

S. Rose, for Petitioner, Cross.

Q. Until 10:00? [450] A. Until 10:00. That was at the end of the four hours of mine.

Q. You mentioned the end of the four-hour shift for the waitresses. A. I wouldn't see in and out and again I would just stay.

Q. And take over cashiering and hostessing? A. Actually it was where I was, we were that busy, where I'd be getting up and around the lot, closing out the machine and things like that.

Q. Are the waitresses scheduled to work until 10:00 or 9:00? A. That was that they couldn't leave before 9:00. You had to work four hours.

Q. From 9:00 to 10:00, who was it that determined which waitresses would go home, if you're on duty as hostess? A. I didn't.

Q. Well how was it decided? A. Most of them would just leave at 9:30. Not most, but two or three girls, and the girls that had finished their station, it was 9:30 and they would just say, "I'm all set up and ready to go."

Q. Would she check with you before leaving, and say to you, "I'm leaving now?" [451] A. Yes. Just sign out.

Q. Is that anything different than when Mrs. Nichols was there? A. No.

Q. Work the same? A. Yes.

Q. Who passed out the paychecks, Mrs. Rose? A. When Sandy was there?

Q. At anytime? A. Well, it depends now. Mr. Killion.

Mr. Lipsitz: Checks, what?

Q. (By Mr. Drenning) Let me be precise. The period before the election, who generally passed the paychecks out in the dining room? A. Sandy.

Q. In Mrs. Nichols' absence, who passed them out? A. The hostess.

S. Rose, for Petitioner, Cross.

Q. Whoever that happened to be? A. Yes.

Q. You yourself have passed out paychecks? A. No.

Q. You gave a statement to the Board Agent on May 23rd, 1973? A. Yes.

Q. Did you tell the Board Agent as follows: "Nichols [452] gives out the paychecks each week, but sometimes other hostesses do." A. Yes.

Q. You mean you did? A. No, I was not in on Friday to do it.

Q. Other hostesses besides Mrs. Nichols had, however? A. Yes.

Q. I take it you were sick from time-to-time, Mrs. Rose, as you were a waitress? A. Yes.

Q. And when you called in to report illness, did you speak with whoever answered the phone? A. Not always. I would either ask for the dining room, especially if I knew it was going to be a busy week, I knew I'd have to get a hold of somebody and let them know right away, let them know I was going to be replaced; most often called the dining room to tell Sandy. If then she was not there, I would call the office.

Q. You'd call the desk? A. No, the office, innkeeper or assistant innkeeper.

Q. With regard to Mrs. Perisi's termination, you indicated that. . . I believe that you saw Mrs. Nichols draw lines through Mrs. Perisi's name? [453] A. Yes.

Q. Do you know when that occurred relative to the advice to you that Mrs. Perisi called in and indicated that she would not be in? A. I'd say within the next five to ten minutes.

Q. Did Mrs. Nichols walk away from the dining room anytime before striking that name out? A. Yes.

Q. She left the dining room, as far as you know? A. I don't know where she went. I was working.

Q. Let me get the sequence. You heard about the advice,

S. Rose, for Petitioner, Cross.

heard of the phone call involving Mrs. Perisi, that she reported she was not able to come in, and next you heard some conversation about that, then Mrs. Nichols left the dining room? A. Yes, she left the dining room and went in the kitchen.

Q. Do you know if she might have gone someplace else? A. I don't think she did. I really don't know, but there were other people in the kitchen also.

Q. In any event, she was absent from the dining room for five minutes and she returned? A. No, see, I was serving cocktails and I was waiting on tables and serving cocktails. I served my cocktails [454] and went out in the kitchen and put my orders in. She was there.

Q. You don't really know whether she had been there the whole time or absent or what? A. I couldn't really say she was in there because I wasn't in the kitchen all the time.

Q. Did there come a time when, during Mr. King's illness, you became upset with your scheduling on parties? A. Yes.

Q. What did you do about that; why were you upset first of all? A. Well, because we weren't working them.

Q. No, as to you, Mrs. Rose, why were you personally upset? A. Why was I? Because if we were working. . . I mean if we were slow and we weren't working parties or things of this sort where there was no money in the dining room to be made, and we were older waitresses, so we wanted to work parties also; or me.

Q. This was during the time Mr. Chieffo was acting for Mr. King as the innkeeper? A. Yes.

Q. Mrs. Nichols was hostess at that time? A. Yes.

[455] Q. Did you have occasion to talk to Chieffo about your unhappiness? A. Yes.

Q. What did he say? What did you say to him and what did he say to you? A. I don't remember word-for-word. I told

S. Rose, for Petitioner, Cross.

him I wanted to work parties, you know, and check the schedule and see. He said he'd look into it.

Q. What happened after that? A. Then I started working parties.

Q. You started working parties after that? A. Yes.

Q. Do you know if he talked to anybody? A. No, I don't.

Q. All you know is you talked to Chieffo? A. Yes.

Q. And later on you started working parties? A. Yes.

Q. Did Mr. Chieffo ask you how it was that you weren't assigned to parties previously? Did you talk about it at all? A. Yes, we did talk about it.

Q. Did you complain about Mrs. Nichols? A. Well, I just said like, why were younger girls working parties when we have been there longer and [456] there wasn't time, and that I had worked parties at other times and wanted to know why I wasn't now. And I might have, now I'm not sure, told him that I even talked to Sandy about it, you know, and I didn't get any satisfaction out of talking to her, so I went to him.

Q. Mr. Chieffo, I take it, was relatively new to the Inn at that point? A. Yes.

Q. Did he understand what you were talking about; did he understand the facts? A. Yes.

Q. Did he indicate he'd look into it? A. Yes.

Q. With respect to Ricki Booth's termination, I don't mean to bring up any unpleasantness. I appreciate it may be a little sensitive, but you indicated that you were told Sandy said it was her job to fire Ricki Booth or see that she was fired, how did you put that, she put that? A. She said that she was in the office with Mr. King and that he had told her to call her up and fire Ricki, and she said that she told him that she didn't want to and he said she should because it is her job to do that.

[457] Q. She said that Mr. King had made the judgment to fire Ricki Booth? A. Yes.

J. Szocki, for Petitioner, Direct.

Mr. Drenning: I have no more questions.

Mr. Newsome: A few questions, please.

CROSS EXAMINATION:

Q. (By Mr. Newsome) During your employment have you seen notices concerning management? A. I used to about the first year I worked there or first year and a half or more.

Q. Was Sandra Nichols' name on that list? A. Yes.

Q. Was there a title by her name? A. Pardon me?

Q. Was there a title by her name? A. No.

Q. Just her name? A. Yes.

Mr. Newsome: Nothing further.

Mr. Drenning: No.

Mr. Lipsitz: No questions.

Hearing Officer: You are excused. Thank you very much.

(Witness excused)

Hearing Officer: Proceed.

[458] Whereupon,

JESSIE SZOCKI was called as a witness by and on behalf of the Petitioner and, being first duly sworn, was examined and testified as follows:

Hearing Officer: Give your name to the Court Reporter.

The Witness: Jessie Szocki.

DIRECT EXAMINATION:

Q. (By Mr. Lipsitz) Is it Mrs.? A. Yes.

Q. Mrs. Szocki, are you employed at Holiday Inn? A. Yes, I am.

Q. In what capacity? A. Waitress.

J. Szocki, for Petitioner, Direct.

Q. How long have you been employed? A. Since the day it opened.

Q. What shift are you presently on? A. 5:00 to 10:00.

Q. That is 5:00 P.M.? A. At night, yes.

Q. Has that always been your shift? A. Yes.

Q. Basically? A. Yes.

[459] Q. How many nights a week? A. Five.

Q. Have you normally been working five nights a week?

A. Yes, sir.

Q. Do you also work in the cocktail lounge from time-to-time? A. Oh, once in a great, great while.

Q. Did you work parties or banquets? A. I don't anymore.

Q. Have you ever had occasion to ask for time off? A. Not in the last year and a half, no.

Q. Now, were you present in October of 1972 when anything involving Sandra Nichols and Ann Perisi took place? A. Yes, I was there.

Q. Did you hear anything said by Sandra Nichols in your presence? A. Yes.

Q. Tell us what you heard said?

Mr. Drenning: Object again unless it is a conversation between the witness and Nichols or somebody else and the witness.

Hearing Officer: Do you understand the foundation; you are asking if this witness was present [460] during that conversation?

Mr. Lipsitz: That's correct. Any conversation in which Sandra Nichols said something about Ann Perisi.

Hearing Officer: I will permit it. The objection is overruled.

Q. (By Mr. Lipsitz) You may answer. A. Sandra Nichols says she is through.

J. Szocki, for Petitioner, Cross.

Q. Who did she say that to? A. All of us standing there.

Q. "All" meaning. . . A. Waitresses.

Q. Did she say anything more about that? A. She walked to the kitchen and scratched her name off.

Q. Did you follow her? A. I saw her scratch her name off.

Q. Had anything that you known of taken place, taken place before she made that statement, "She is through"; had something happened with Ann that preceded that that you are aware of? A. Ann didn't come in to work.

Q. Do you know Ricki Booth? A. Yes, sir.

Q. Did you hear any conversation in which Sandra [461] Nichols spoke to Ricki Booth about the subject of being fired? A. I had a conversation with Sandy. I was there, and Sandy was crying and I says to Sandy, "What are you crying about?" She says, "I'm crying because Mr. King is making me fire Ricki." I said to her, "It is your job. Quit crying and do it."

Q. Did she say anything else? A. Just kept crying.

Q. Have you had your schedule changed at all during the period of time? A. Yes.

Q. Who did you speak to or who spoke to you about changing your schedule? A. Sandy Nichols.

Q. Had you made any requests to her to change your days off, for example? A. Once in awhile, yes.

Q. How did she respond when you made your request? A. She'd give it to you.

Q. Did she say if she had to get permission from anybody else? A. No, she didn't.

* * *

[465] CROSS EXAMINATION:

Q. (By Mr. Drenning) Mrs. Szocki, you talked in your direct testimony about scheduling? A. Yes.

J. Szocki, for Petitioner, Cross.

Q. And about how you were assigned? A. Yes.

Q. And worked basically the same shift day in and day out; right? A. Yes, sir.

[466] Q. There was relatively little involved in your scheduling; right? A. Yes, sir.

Q. On the day-to-day basis, did you get different tables assigned to you? A. Yes.

Q. How was that done; was that automatic or did somebody have anything to do with it? A. No, the hostess assigns tables.

Q. Monday you have different tables than you had last Friday? A. They tried to do it that way.

Q. Try to schedule? A. Have a change.

Q. So they walk. . .the walk from the kitchen is not so long? A. Yes.

Q. Everybody gets a chance to take a short and long route? A. Being fair, yes.

Q. Did you ever talk with Mrs. Nichols about some emergency or other, taking time off? A. Yes.

Q. Did she ever say no? A. No.

[467] Q. Why do you say it so emphatically? A. Well, I very seldom ask for time off.

Q. Okay. On the occasions that time off was requested by you or other waitresses, what would Mrs. Nichols do if the request was to her? A. She'd give it to you.

Q. Try to get somebody to cover? A. Try to get others, another girl for the day off.

Q. Would she try to cover for you if you were not coming in? A. I switched days off with Susanne.

Q. First of all, if Mrs. Nichols was not there and this kind of thing came up, who was in charge of that? A. We'd always ask in advance.

Q. I'm asking in the event you didn't know, and Mrs.

J. Szocki, for Petitioner, Cross.

Nichols was not there, somebody became ill, if somebody needed time off? A. We called Mr. King.

Q. You called Mr. King? A. Yes.

Q. With regard to the conversation with Mr. Straight, when you were working as a cocktail waitress that one evening, did John ask you if you wanted to go [468] home? How. . . John Straight, I'm sorry, ask you if you wanted to go home, or tell you? A. I don't remember.

Q. Did you want to go home? A. Well, sure. Who wants to stay there at midnight?

Q. Mr. King left no specific instructions about how long you were to stay? A. No, we were busy when he asked me to work, and at about a quarter to 12:00, we weren't busy anymore and I said, "Gee, John, I have to stand here and there's nothing to do." He says, "You can go home." I said, "Mr. King told me to stay. I'm afraid to just go. I don't want to be fired." He says, "I can tell you to go home." I said, "I said, okay, John. Thank you."

Q. You raised the question with him? You said, "Gee, John, I'm tired." A. I can't remember exactly. I don't know.

Q. Have you ever acted as a cocktail waitress with other bartenders on duty? A. We are at the bar all the time with all the bartenders.

Mr. Drenning: I have no more questions.

Mr. Newsome: No questions.

Mr. Lipsitz: No questions.

[469] Hearing Officer: Thank you. You are excused.

(Witness excused)

Mr. Lipsitz: I call Mary Strobel.

M. Strobel, for Petitioner, Direct.

Whereupon,

MARY STROBEL was called as a witness by and on behalf of the Petitioner and, after being first duly sworn, was examined and testified as follows:

Hearing Officer: Give your name to the Court Reporter.

The Witness: Mary Strobel.

DIRECT EXAMINATION:

Q. (By Mr. Lipsitz) Mary, are you employed at the Holiday Inn? A. Yes, I am.

Q. How long have you been employed? A. Since May of 1972.

Q. In what capacity? A. Waitress.

Q. Were you interviewed by anyone before you were hired? A. I just went there on impulse and I filled out an application. Kevin Porter was assistant manager and happened to be at the front desk and he just told me to fill out the application, told me there wasn't [470] any help available.

Q. Where did you hear about that? A. About three weeks later Sandy called up and asked me to come in.

Q. Sandra Nichols? A. Yes.

Q. Did you know her at the time? A. No.

Q. Who told you? A. She says she was calling from the Holiday Inn and asked if I was still interested in getting a job, to come in the dining room and ask for Sandy. She gave me a time to come in. I don't know the time.

Q. Did you follow those instructions? A. Yes.

Q. Did you meet with her? A. Yes.

Q. Who was the Sandy that you met with? A. Sandy Nichols.

Q. Who you then knew as Sandy Nichols? A. Right.

M. Strobel, for Petitioner, Direct.

Q. Did she ask you questions relative to working? A. She asked if I had any experience. Just told me some things about the type of work and I asked her [471] questions about how much the salary was and she just told me that I'd be working days from 7:00 to 3:00 and to come in the following Friday.

Q. Now, the several weeks before that you filled out the application, who was the man that you said gave you it? A. Kevin Porter.

Q. Did Mr. Porter ask you any questions of this character? A. No. He told. . . I was with another girl. He told us both that there weren't. . . was now enough help, if there was anything, he'd let us know. He told us both that it might be a matter of a few weeks. He didn't ask any questions.

Q. Did he give you a form to fill out? A. Yes, the girl at the desk did.

Q. Did you start working the 7:00 to 3:00 shift? A. Yes.

Q. That is 7:00 A.M.? A. Yes.

Q. Have you worked that shift consistently since then? A. No, I worked that since the summer only then I went back to school. I was just working nights, [472] mostly part-time.

Q. Where did you go, Fredonia-State? A. Yes.

Q. That started in the fall of '72? A. Right.

Q. When you went back to work did you talk to anybody about scheduling different hours? A. When I talked to Sandy in my interview I told her I was going to school. She asked me if I would be interested in working parties during the year when I'm going to school. I said, yes. I took a couple of weeks in August to see my mother, to see my parents, to go back home.

Q. Let's talk about that. Did you talk to anybody about taking off? A. I told Sandy that I needed time off to go home.

Q. Did she say anything to you about that? A. She said, "Go ahead." And to call when I got back.

M. Strobel, for Petitioner, Direct.

Q. Did you? A. Yes.

Q. Did you see her? A. I called in. I lived with a girl in the same situation. Either I called or her.

[473] Q. Who was it you lived with? A. Nancy Woodpeck. At the time I lived at the school and she told me it was only weekends with the parties.

Q. She told you when you were going to work? A. Yes.

Q. Is that the schedule you worked then? A. Yes, in the summer.

Q. Now, talking about the end of the school year, what did you do then? A. I worked night shift five days a week.

Q. How did you learn about that shift? A. Well, at that time Mr. Killion was there and I had asked him to be the night girl.

Q. You spoke to him about that? A. Right.

Q. Was Mary already gone by then. . . I mean, Sandra, was she still there? A. No, she was gone.

Q. Is there anything that you can tell us of which you have direct knowledge of Sandy Nichols hiring anybody else, other than yourself? A. The girl I lived with, also, she had the same thing. She interviewed her. She called her up a couple of weeks after me.

[474] Q. "She" meaning who? A. Sandra.

Mr. Drenning: I object again. It's still conversation with others.

Q. (By Mr. Lipsitz) Were you present? A. No.

Q. You heard this from your room mate? A. Right.

Q. Does your room mate still work there? A. Yes.

Q. All right. Anybody, anything in which you have more direct knowledge, that is to say, were you present when anyone was interviewed or talked to about hiring by Sandra or about the shift? A. Scheduling?

J. Lineman, for Petitioner, Direct.

Q. Yes? A. Yes. There were many times when a girl would go up or I'd go up myself, or call and ask her. . . ask for a certain time off. She would always arrange it. If I had tests scheduled during the week. This happened last May, because there's a lot of parties. She started scheduling me five days a week. Both school and exams going on. Me and Nancy said, no, we have got exams the next day, and she would say, "Okay," and cross it out.

[475] Mr. Lipsitz: No more questions.

Mr. Drenning: Any affidavit?

Mr. Newsome: No.

Mr. Drenning: I have no questions.

Mr. Newsome: No questions.

Mr. Lipsitz: Joyce Lineman.

Whereupon,

JOYCE LINEMAN was called as a witness by and on behalf of the Petitioner and, being first duly sworn, was examined and testified as follows:

Hearing Officer: Give your name to the Court Reporter.

The Witness: Joyce Lineman.

DIRECT EXAMINATION:

Q. (By Mr. Lipsitz) Joyce, are you employed at the Holiday Inn? A. Yes.

Q. In what capacity? A. Waitress.

Q. How long have you been employed as Waitress? A. Since a year ago, August.

Q. That would be August, 1972? A. Yes.

Q. Have you worked the same or different shifts? [476] A. Usually days unless I was asked to come in at night.

J. Lineman, for Petitioner, Direct.

Q. How many days a week were you working? A. 40 hours when I first started and then two or three days during the winter months.

Q. Now, when your schedules change from 40 hours to two or three days or from days to the occasional times when you worked evening, who talked to you about that or who informed you about that or how did you learn about it? A. Sandy Nichols told me.

Q. Did she make, did you see any changes made on the schedule as a result, on the written schedule, or was this all verbal? A. She told me that she would have to cut my hours because business was slowing down and girls that had been there longer, she would have to give them the hours.

Q. How about on the occasion when you said you worked nights rather than days, how did it come about? A. Well, I had written on my application that I couldn't work nights, but if they had a party and they were short of help, she'd come up and ask me.

Q. Who is "she"? A. Sandy would come up and ask me if I'd work a [477] party. I told her I'd let her know whether I would or not.

Q. Who spoke to you before the time you actually came to work? A. Sandy Nichols.

Q. What were the circumstances; did you walk in off the street; did you make a telephone call? How did that happen? A. I seen an ad in the paper. I had put in an application elsewhere and I was driving by and I stopped. I went in and asked for Mrs. Nichols. The girls at the desk asked me if I wanted to put an applicaton in. I said, yes. So I filled it out and gave it to the girl and she went and got Sandy and she interviewed me.

Q. What kind of questions did she ask you and what did you say to her, what kind of questions did she ask you? In

J. Lineman, for Petitioner, Direct.

other words, tell us what you recollect of the conversation?

A. She told me what the wages would be. I told her I had no experience. She told me what the girls wore and she told me that. . . .she told me she had just hired two girls to work. She was going to try them out on the two weekends and if they didn't work out, she'd call me. The next day she called me and [478] asked me if I would come in the following day to work.

Q. The next day she called and asked you what? A. If I would come in to work the following day.

Q. And you did? A. Yes.

Q. And that was the beginning of your employment? A. Yes.

Q. You remained employed there since? A. Yes.

Q. Did anybody else besides Sandra Nichols talk to you about the employment other than the person at the desk who gave you the application? A. No.

Q. The person at the desk who gave you the application, was it a man or woman? A. It was a girl.

Q. Did you know her? A. No.

Q. She is not. . . .well, she is not anybody in this room? A. No.

Q. Did she ask you any questions about your experience or desires or interest in being a waitress or just give you an application? A. She asked me if I was there to fill out an [479] application. I said, yes, that it's what I have come for.

Q. That was the entire conversation that you recollect? A. Yes.

Q. Can you tell us anything about any other employee which you were present when anything was done regarding hiring or firing of some other dining room employee in which Sandra Nichols was involved? A. I had seen her in the dining room interviewing girls, but. . . .

J. Lineman, for Petitioner, Cross.

Q. When you had seen her interviewing, does that mean you had heard or observed? A. I observed it when she'd sit at the table with girls with applications, talking to them.

Q. On one or more than one occasion? A. More than once.

Q. Did any of those persons subsequently become employed as waitresses at the hotel, other than yourself? A. Two I remember, Marcia and Joan.

Q. Do you recall last names? A. No, I don't recall.
[480] Q. Do you recall saying though, that you saw Marcia and Joan sitting at a table with her, and then subsequently they came to work? A. Yes.

Mr. Lipsitz: No further questions of the witness.

Mr. Drenning: Mr. Newsome, affidavit?

Mr. Newsome: None.

CROSS EXAMINATION:

Q. (By Mr. Drenning) Mrs. Lineman, is it? A. Lineman.

Q. You testified that Mrs. Nichols talked to you about availability for parties and such when scheduling problems arose? A. Yes.

Q. She asked you about your availability. A. Well, I had written on the application that I couldn't work nights, but sometimes she would come up to me and say, she couldn't get enough girls and asked me if I would work. I'd say I would have to check with my husband first.

Q. Did you ever say no, you couldn't work a given event? A. Yes, I had. A couple of times.

Q. What did Mrs. Nichols say to that? [481] A. She didn't say anything except she'd try to find somebody else.

Q. Did she walk away and accept your word for it? A. Yes.

Q. To your knowledge if any of the waitresses said they

J. Lineman, for Petitioner, Cross.

couldn't work a given function, did Mrs. Nichols pursue it any further? A. No.

Q. The primary job of Mrs. Nichols was to determine availability. . .

Mr. Lipsitz: Just a minute. I don't object, if you want to lay a foundation. Primary job. I object to the form of the question.

Hearing Officer: Rephrase it.

Q. (By Mr. Drenning) Well, was there ever an occasion when a waitress was asked to work, and that particular waitress said no, that Mrs. Nichols did anything other than try to encourage her to work? What did Mrs. Nichols do, just simply walk away on each occasion? A. No, I know like for Thanksgiving and Christmas and New Years, we were told we had to work. I know one girl worked extra hours on Thanksgiving and she worked on Christmas. She was scheduled to work until midnight on New Year's Eve and she planned a party and everything at her house and afterwards she was [482] told that she had to work longer hours and the girl didn't come in, she left or something. I can't remember what happened. Right after that she was terminated.

Q. This was during the holiday season? A. Yes.

Q. Would this be. . .when you're talking about everybody had to work longer hours, was it a party you are talking about or just the dining room function, you know, regular dinners or luncheons and so on; was it both events? A. Thanksgiving and Christmas would be the dining room everybody had to work. New Years, they had just a big New Year's party and banquet.

Q. Likewise, if it was busy, everybody was expected to work longer, like ski weekends or summer weekends at the colleges; is that true? A. I suppose that is true.

Q. Did you ever hear Mrs. Nichols ever threaten any kind

J. Lineman, for Petitioner, Cross.

of action to any waitress who had declined to work a party?
A. I can't remember.

Q. Do you recall a situation when a waitress had declined to work a party when Mrs. Nichols did anything but walk away? [483] A. I have seen her get mad and walk away, but I don't know what the circumstances were.

Q. She simply would walk away, and never did anything but walk away? She may have fumed and became angry, but never did anything but walk away? A. Not that I can think of.

Q. I ask you again, was she doing anything more than finding out waitress availability for a party? I mean, you testified. . .

Mr. Lipsitz: I'm going to object to this as argumentative to the witness. She has testified to her recollection of conversations and observations of what happened. Now he is asking her to characterize what happened as her opinion, that she didn't do anything more than, and I think that is objectionable.

Hearing Officer: No, let him go ahead on that.
Overruled.

Q. (By Mr. Drenning) Did she do anything more than establish availability for the party? A. No.

Q. That is all she did. If you said, "Yes, I can make it", she would say, "Fine, Joyce. Be happy to have you." Is that substantially what happened? A. She'd go and write on the schedule, if I said yes.

[484] Q. If you said no, what did she do; walk away, right? That would be the end of the conversation? A. Usually. If I said I'd let her know, we'd carry it on later and then I would check.

Mr. Drenning: No more questions.

J. Lineman, for Petitioner, Re-direct.
Excerpts from Stenographic Transcript of Testimony
at Hearing, October 10, 1973—Case
No. 3-RC-5678.

RE-DIRECT EXAMINATION:

Q. (By Mr. Lipsitz) Just a minute. You testified, I think you said Thanksgiving, Christmas and New Years we were told that we had to work longer hours. Do you recall answering that? A. Yes.

Q. Who told you that? A. I don't know if it was longer hours necessarily, but everybody had to work that day.

Q. Who told you that? A. Sandy.

Q. Sandy who? A. Nichols.

Mr. Lipsitz: I have no further questions.

* * *

[492] **Excerpts from Stenographic Transcript
of Testimony at Hearing,
October 10, 1973.**

[495] PROCEEDINGS.

Hearing Officer Tucker: The hearing will be in order.

This is a formal hearing in the matter of Dunkirk Motor Inn, Inc., d/b/a Holiday Inn of Dunkirk-Fredonia, Case No. 3-RC-5678.

The Hearing Officer is L. W. Tucker.

May we have the appearances for the record, please? For the Employer?

Mr. Drenning: Moot, Sprague, Marcy, Landy, Fernbach & Smythe. John B. Drenning, 2300 Erie County Savings Bank Building, Buffalo, New York.

*Excerpts from Stenographic Transcript of Testimony
at Hearing, October 10, 1973—Case
No. 3-RC-5678.*

Hearing Officer: For the Petitioner?

Mr. Putrino: Lipsitz, Green, Fahringer, Roll, Schuller & James, by Carmine Putrino.

Hearing Officer: For the Region?

Mr. Newsome: Carl Newsome, 111 W. Huron Street, Buffalo.

Hearing Officer: By order of September 21st, 1973, there was issued the order resuming hearing. I wonder if, Mr. Newsome, are you going to introduce any papers on that score?

Mr. Newsome: Yes. I plan to put it in as Regional Director's Exhibit 1(g) to the original formal papers.

[496] Hearing Officer: Do you wish to do that now?

Mr. Newsome: Yes.

Hearing Officer: Go ahead.

Mr. Newsome: I offer in evidence Regional Director's Exhibit 1(g). This exhibit has been shown to the parties.

Hearing Officer: Is there any objection to the receipt of the exhibit?

Mr. Drenning: No objection.

Mr. Putrino: No objection.

Hearing Officer: The exhibit is received.

(The document above-referred to, was marked Regional Director's Exhibit 1(g) for identification and received into evidence.)

Mr. Putrino: For the petitioner . . .

Hearing Officer: Mr. Putrino, do you wish to go forward now?

Mr. Putrino: Yes, I do. At this time I'd like to call Sandra Ann Nichols to the stand.

S. A. Nichols, for Petitioner, Direct.

Whereupon,

SANDRA ANN NICHOLS was called as a witness by and on behalf of the Petitioner and, after being first duly sworn, was examined and testified as follows:

Hearing Officer: You may sit down and give your full name to the Court Reporter.

[497] The Witness: Sandra Ann Nichols.

Hearing Officer: Mr. Putrino?

DIRECT EXAMINATION:

Q. (By Mr. Putrino) Is it Miss or Mrs. Nichols? A. I am divorced, Miss.

Q. Miss Nichols, can you tell me, were you served with a subpoena requiring your attendance here this morning? A. Yes.

Mr. Putrino: I'd like to have this marked as an exhibit.

(The document above-referred to, was marked Petitioner's Exhibit 3 for identification.)

Q. (By Mr. Putrino) I show you what has been marked as Petitioner's Exhibit 3 for identification and ask you if that is a copy of the subpoena, of the original subpoena served on you? A. Yes.

Mr. Putrino: I offer that in evidence.

Hearing Officer: Any objection?

Mr. Newsome: No objection.

Mr. Drenning: No objection.

Hearing Officer: The exhibit is received.

(The document above-referred to, heretofore marked Petitioner's Exhibit 3, was received into evidence.)

* * *

S. A. Nichols, for Petitioner, Direct.

[503] Hearing Officer: You may continue to question the witness.

Q. (By Mr. Putrino) Mr. Nichoisi, were you an employee of the Holiday Inn in Dunkirk, New York? A. Pardon me?

Q. Were you an employee of the Holiday Inn in Dunkirk, New York. A. Yes.

Q. When was that? A. Let's see. I have been out of there like maybe three months, four months.

Q. How long were you employed there? A. A year and a half.

Q. Approximately when did you commence employment? A. When did I what?

Q. Start employment at Holiday Inn? A. When you . . . when they opened up.

Q. Do you recall when that was? A. June of . . . let's see this is 1974. '73, '72 . . . June of '72.

Q. June of '72? A. Right. Are you talking about . . .

Hearing Officer: Just testify to the best of your recollection.

The Witness: I believe I had been there a year [504] and a half.

Q. (By Mr. Putrino) Who hired you, Miss Nichols? A. Dean King.

Q. What was your employment, what were you employed as? A. A waitress.

Q. What hours did you work? A. 7:00 to 3:00.

Q. And what days? A. Then I worked 5:00 to 10:00, too.

Q. In what days? A. Just a five-day schedule.

Q. Same five days each week? A. Yes.

Q. What days were they? A. Wednesday through Sunday.

Q. And how many waitresses worked your shift with you? A. Now, are you going to talk business . . . when it is busy or slow?

S. A. Nichols, for Petitioner, Direct.

Hearing Officer: Just answer the question as best you can.

Q. (By Mr. Putrino) How many waitresses worked with you? A. Five.

[505] Q. On the 7:00 to 3:00 shift? A. Yes.

Q. How many worked with you when you worked 5:00 to 10:00? A. Five.

Q. What was your salary, Miss Nichols? A. \$1.22 an hour.

Q. Were you employed at that rate throughout your entire year and a half tenure with Holiday Inn? A. No.

Q. Did your salary increase? A. No.

Q. Were you employed at a lesser rate than some . . . at some point? A. No.

Q. Well then, can you explain your answer to my question when I asked you were you employed at that rate? A. I said no.

Q. You were not employed at that rate throughout your employment? A. Not for a year and a half.

Q. What other rate? A. \$1.77.

Q. How long were you employed at \$1.77? A. I'd say probably a year.

[506] Q. Do you know for sure? A. No.

Q. And do you know approximately when you started to earn \$1.77 an hour? A. It would be May.

Q. May of '72? A. Yes.

Q. When you were earning \$1.77 an hour were you designated as a waitress by your employer? A. No.

Q. What were you called? A. Cashier-Hostess.

Q. How many Cashier-Hostesses were there, Miss Nichols? A. Approximately . . .

Q. Pardon me? A. Four.

Q. How many on your shift? A. Two.

Q. Starting in May of '72, what shifts are we talking about? A. 7:00 to 3:00 and 5:00 to 10:00.

S. A. Nichols, for Petitioner, Direct.

Q. You worked both shifts? A. Yes.

Q. Did you rotate? [507] A. Yes.

Q. In other words one week you worked 7:00 to 3:00 and one week you worked 5:00 to 10:00? A. Yes.

Q. Were there two hostesses on each shift, both 7:00 to 3:00 and the 5:00 to 10:00? A. Yes.

Q. Were you ever involved in the interviewing of waitresses to be hired by the Holiday Inn? A. Yes.

Q. Do you have any recollection as to the number of waitresses you interviewed? A. No.

Q. Do you have any idea as to over what period of time you did this interviewing? A. No.

Q. Is it that your recollection . . . A. I don't remember.

Q. You don't remember? A. No.

* * *

[509] this new purpose of stimulating the witness' recollection?

Mr. Newsome: No.

Hearing Officer: I think I will deny that request, Mr. Putrino. Continue. You have an exception, of course.

Mr. Putrino: Thank you.

Q. (By Mr. Putrino) Miss Nichols, were you ever involved in disciplining employees, waitresses, at the Holiday Inn? A. No.

Q. You never were? A. No.

Q. Were you ever involved in the discharge of employees at the Holiday Inn? A. No.

Q. Are you familiar with an employee by the name of Ricki Booth? A. Yes.

Q. And in what position was she employed? A. Pardon me?

S. A. Nichols, for Petitioner, Direct.

Q. What position was she employed? A. She was a waitress.

Q. Were you involved in interviewing her when she was hired? [510] A. No.

Q. Was she there before you started? A. No.

Q. Were you involved in her discharge? A. No.

Q. You were not? A. No.

Q. Did there come a time when you made a telephone call to Mrs. Booth or Ricki Booth and indicated to her that she was fired? A. No.

Q. Or terminated? A. No.

Q. That is not so? A. No.

Q. Miss Nichols, did you discuss your testimony here this morning or presence here this morning with your former employer, Mr. King? A. Pardon me?

Mr. Putrino: Would you read the question back, please?

(The pending question read back by the Reporter.)

The Witness: I have a cold and it is sort of hard to hear. Yes.

Q. (By Mr. Putrino) Did you discuss your testimony [511] or presence here with any Counsel or Attorney representing your employer? A. Yes.

Q. Were you asked to appear here voluntarily at a prior hearing scheduled on September 19th and 20th? A. No.

Q. Miss Nichols, were you involved in scheduling the employment of waitresses on any or all shifts on the Holiday Inn in Dunkirk, while employed as a Hostess-Cashier? A. Yes.

Q. When you were paid \$1.77 an hour, can you tell us what other benefits you received? A. Paid vacation, insurance benefits.

Q. Can you tell us the extent of the insurance benefits? A. No, I don't know.

S. A. Nichols, for Petitioner, Direct.

Q. You don't recall? A. No.

Q. Did that include hospitalization? A. I think so.

Q. Did it include major medical? A. I don't know.

Q. Did it include life insurance? A. I don't know.

Q. Do you recall interviewing waitresses for the [512] Holiday Inn in Dunkirk, New York in response to an ad that indicated that applicants should call and ask for you? A. Yes.

Q. Do you know who placed that ad, Miss Nichols? A. Dean King.

Q. Can you tell us when that ad was placed? A. I think in September.

Q. Of what year? A. Has to be '71. I think I got my years mixed up.

Q. So it was September of '71? A. '71 or '72. No, I'm wrong, '72, I think.

Q. You are not sure? A. No. '71 or '72.

Q. Do you know if that information was included in your statement, that is when you . . . A. What, sir?

Q. That is when you were employed as a Cashier-Hostess and when you were involved in the interviewing of waitresses pursuant to that ad, was any of that information included in your statement you gave to the Board? A. Yes.

Q. If you saw that statement, would that refresh your recollection? [513] A. About what?

Q. About the question I just asked you? A. Would you repeat that?

Q. Do you recall the year in which you did that interviewing; was it '71 or '72? A. No, I don't.

Mr. Putrino: At this time I request the statement again, sir.

Hearing Officer: I will make the same ruling. I will deny the statement.

Mr. Putrino: Thank you.

S. A. Nichols, for Petitioner, Direct.

Q. (By Mr. Putrino) Miss Nichois, were you called by your Employer . . . strike that. You indicated in an earlier question that you discussed your testimony or presence here with Counsel for the Employer and Mr. King, your former Employer, I should say? How did that conversation come about? A. I called him.

Q. What was your purpose in calling him? A. Just to see if I really had to get involved in this.

Q. And who did you call? A. I talked with Mr. King.

Q. When did you talk with Counsel for the Holiday Inn? [514] A. Since September.

Q. I beg your pardon? A. Maybe a week before the hearing, your last hearing.

Q. Were you instructed not to attend the hearing? A. No.

Q. Was it suggested to you that it would be better if you did not attend the hearing? A. No.

Q. Was there any discussion at all concerning your attending the hearing? A. No.

Q. Did you ask if you could avoid the hearing? A. Yes.

Q. And you were told "yes"? A. Pardon me?

Q. Was that question answered in the affirmative? A. No.

Q. In other words you were told you had to be at the hearing? A. No. I'm sorry.

Q. Who was it that told you that you did not have to be at the hearing? A. Well, it wasn't stated that way, sir, that I did not have to.

[515] Q. How was it stated? A. You can come or you don't have to.

Q. Who told you that? A. Mr. Drenning.

Mr. Drenning: Excuse me. We're talking about the subpoena now . . . what is the testimony? I'm not sure I understand.

Mr. Putrino: September of 1973, prior to the first hearing.

S. A. Nichols, for Petitioner, Direct.

Mr. Drenning: Could we go off the record?

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record, Mr. Putrino?

Mr. Putrino: Thank you.

Q. (By Mr. Putrino) Do you recall a waitress employed at the Holiday Inn by the name of Ann Parisi? A. Yes.

Q. Were you involved in interviewing Miss Parisi? A. No.

Q. Do you know if Miss Parisi was working there when you left your employment with the Holiday Inn? A. No.

Q. Do you know how she came to be terminated? A. Pardon me?

[516] Q. Do you know how she came to be terminated? A. Yes.

Q. Can you tell us? A. We were having a barber shop convention at the Holiday Inn and she was on the schedule to work and about 15, 20 minutes prior to the time that she was supposed to report for duty, she called in sick, so Sue Sam came and spoke to me and I went in the office and told Mr. King that she wasn't going to come, and he asked if I would check to see what the problem was why she could not report to work. Well, she was not at home and she was not at the address that she gave where she was living.

Q. Did you talk to Miss Parisi after that? A. Yes.

Q. Were you involved in the interviewing of Pat Rose as a waitress? A. Yes.

Q. Were you involved in interviewing Mary Strobel? A. Yes.

Q. Nancy Wittpenn? A. Yes.

Q. Can you tell us the names of any other waitresses that you were involved in hiring? A. Hiring, or interviewing?

[517] Q. Either. A. Joyce Linderman. Dottie Privateer. I think that is all.

S. A. Nichols, for Petitioner, Direct.

Q. Now you said that you did some of this interviewing in September of either '71 or '72, you weren't sure. Did you do any interviewing after that time? A. I don't understand your question.

Q. Did you do any interviewing of waitresses after the interviewing you testified that you did in September of either '71 or '72? A. I don't know.

Q. You don't recall? A. You mean as to other than the people that I have mentioned here?

Q. With any of the people that you mentioned here, I don't care who they were; did you do any interviewing of waitresses after . . . waitresses of the Holiday Inn after September of '71 or '72, the incidents that you referred to earlier?

A. I'd say, I don't know.

Q. You don't know. A. Yes.

Q. Did you do any interviewing at around the time that you left the Holiday Inn? A. No.

[518] Q. What was your reason for leaving the Holiday Inn? A. I found a better job.

Q. Where are you working now? A. I work part-time as a waitress at Shoreward Country Club and part-time at Dickinson's Town & Campus in Fredonia.

Q. When you were Hostess-Cashier, were you responsible for designating sections of the dining room to particular waitresses? A. No.

Q. Who did that? A. They just rotated every day.

Q. Who decided who was going to start in which section? A. Well, the first girl would come in, the early girl and that is how they went.

Q. And you made up the schedules; is that right? A. Schedule of what?

Q. Of the girls that were going to work? A. Yes.

Q. And the hours they were going to work? A. Yes.

S. A. Nichols, for Petitioner, Direct.

Q. If a problem arose in a particular section of the dining room and a girl couldn't handle one of the [519] tables, would you have the authority to give that table to another girl who was less busy? A. No.

Q. Did you ever do that? A. Yes.

Q. Do you recall how many times you did that? A. No.

Q. You don't recall? A. No.

Q. In fact, was there ever a complaint made about your doing that? A. Possibly.

Q. That you know of? A. No.

Q. No one complained that you didn't have the authority to take a table away from a girl; is that right? A. Would you repeat that, please?

Q. No one, to your knowledge, complained to anyone else about your having the authority to take a table away from a particular waitress? A. No.

Q. If a girl couldn't come in and had to call in sick, who would she call on your shift? A. Front desk.

[520] Q. Would she ever call you? A. Yes.

Q. Were the girls ever told that they should call you? A. I don't know.

Q. Did you ever tell the girls that they should let you know if they weren't going to be in? A. Possibly.

Q. Did you ever attend any staff meetings with Mr. King or the Assistant Innkeeper? A. Yes.

Q. Do you recall how frequently you did that? A. Sometimes we did them once a week.

Q. Was that on your regular time or did you have to come in early for that? A. No.

Q. No, what? I'm sorry? A. On our regular time.

Q. When did you take your vacation; Miss Nichols? A. February.

Q. Did you participate in the scheduling of vacations for the waitresses? A. Yes.

S. A. Nichols, for Petitioner, Direct.

Q. When you took your vacation in February, is that February of '71 or '72? [521] A. '72.

Q. '72, and at that time were you paid for your vacation?

A. Yes.

Q. And were you paid the rate of \$1.77 an hour, or \$1.22? A. \$1.77.

Q. That was February of '72. Was there a bulletin board placed there where notices of interest to waitresses were posted? A. No.

Q. Was there some place that you put up notices to waitresses? A. Yes.

Q. Where was that? A. Up over the ice cabinet in the kitchen.

Q. Who made up those notices? A. Mr. King or I.

Q. Do you recall a conversation with Miss Parisi in October, 1972, concerning her being terminated? A. Yes.

Q. Did you tell her that you had taken her off the schedule and that she was going to stay off the schedule? A. No.

[522] Q. You did not? A. No.

Q. Did you tell her that she was terminated? A. No.

Q. What was the nature of that conversation? A. She came in the next day, I'd say maybe 12:00 or 12:30, and she wanted to talk to me. She came to the desk where we have our cash register and that. I told her that she'd have to go see Mr. King.

Q. By that time she had already been taken off the schedule; is that correct? A. Possibly.

Q. As a matter of fact, wasn't that the reason she came to talk to you? A. I don't know.

Q. Do you recall her beginning the conversation by a question concerning why she was removed or scratched off the schedule? A. I told her I didn't have any time to talk and she'd have to see Mr. King.

S. A. Nichols, for Petitioner, Cross.

Q. Do you recall her asking why she was scratched off or taken off of the schedule? A. No.

Q. You don't recall that? A. No.

[523] Q. Did you remove her name from the schedule? A. Yes.

Q. Was that on the nights that she didn't come in when scheduled to work? A. I don't know, sir.

Q. You don't recall when you did it? A. No.

Mr. Putrino: Nothing further.

Mr. Drenning: I defer to Mr. Newsome, if I could at this point, Mr. Hearing Officer.

Hearing Officer: Do you wish to go forward?

Mr. Newsome: No. I think I would prefer to give the parties an opportunity to elicit any testimony from the witnesses they have available before I take any part.

Mr. Drenning: I don't have any questions of Mrs. Nichols at this time, Mr. Hearing Officer.

Hearing Officer: Mr. Newsome?

Mr. Newsome: Yes, sir.

CROSS EXAMINATION:

Q. (By Mr. Newsome) Regarding the advertisement placed in the newspaper notifying employees to call you or Mr. King in regard to employment, did you have conversations with Mr. King concerning that notice; do you recall that conversation with him [524] concerning that? A. Yes.

Q. Could you describe that conversation to us, please? A. Well he just called me in the office and said that he was placing an ad in the paper because we needed help, and that people would be coming in and to let them fill out an application.

S. A. Nichols, for Petitioner, Cross.

Q. Did you ask Mr. King why your name was placed in the advertisement? A. No.

Q. You didn't ask him or you don't recall asking him? A. I don't recall asking him.

Mr. Newsome: May I have this marked as Regional Director's Exhibits 4 and 5 for identification, please.

(The document above-referred to, were marked Regional Director's Exhibits 4 and 5 for identification.)

Mr. Newsome: May I have a minute, your Honor.

Hearing Officer: Yes.

Q. (By Mr. Newsome) Now, I show you what has been marked as Regional Director's Exhibit No. 5 and I will ask you to read from here . . . [525] A. Right here, sir.

Q. Yes, beginning at the right.

Hearing Officer: Read that to yourself.

The Witness: Oh, sorry, yes.

Q. (By Mr. Newsome) Now, is your recollection refreshed? A. Yes.

Q. Now, could you describe that conversation, please? A. Of Mr. King, you mean?

Q. Yes. A. Of why he put my name in the paper?

Q. Right. A. He thought I would have good judgment of whether the girl would have good experience or be well-qualified.

Q. Now, after this advertisement was put into the paper and the waitresses called, what procedure did you use? A. Well, they came in. They would fill out an application, writing down their experience and then they put on it when they wanted to work, if they had transportation, telephone.

Q. Then, what would you do? A. Take and give it to Mr. King.

S. A. Nichols, for Petitioner, Cross.

Q. Did you make any comments? A. To who, sir?

[526] Q. To Mr. King. A. Yes.

Q. What was . . . give us an example of some of the comments you would make? A. I would tell him like whether I thought she had good experience, by what she wrote down on the paper, her appearance.

Q. And did Mr. King usually follow your recommendations? A. Not always.

Q. Now, when this procedure was followed, can you estimate how many girls or waitresses or how many waitresses did you interview or make comments to Mr. King on? A. I don't think I could really state an exact number, sir.

Q. Do you recall. . . I show you again what has been marked as Regional Director's Exhibit No. 5 and I will ask you to read the top of that page. A. Yes.

Q. And ask you again about how many waitresses did you recommend to Mr. King? A. 20.

Q. Now, regarding your interview with Pat King. . . you interviewed her; is this correct? [527] A. Who?

Q. Pat Rose, I beg your pardon. A. Yes.

Q. And then did you have a conversation with Mr. King about her? A. Yes.

Q. After that conversation what was. . . what were you told by Mr. King? A. To call her in, give her a uniform; call her in.

Q. Now, do you recall an employee by the name of Lois Lopski? A. Yes.

Q. Would you describe the difficulty to us, please. A. She was always late for work; tardiness, and this seemed after a while to irritate the other employees. They felt it wasn't fair to them, because they would have to report to work on time and she was always late.

Q. And did you have any conversation with Mr. King

S. A. Nichols, for Petitioner, Cross.

regarding this problem? A. Yes, we discussed this and he said to go out and tell her if she was tardy again, that she would be dismissed from her job.

Q. Did you tell her this and did she follow those [528] instructions. A. Yes.

Q. After that, was there a notice written regarding tardiness and absenteeism of this nature? A. Yes.

Q. What did you do with it? A. Put it up over the ice cabinet.

Q. That was the bulletin board? A. Yes.

Q. Can you summarize as best you can what was written on this notice? A. I'd say "Several Tardinesses without calling in or notifying would create a dismissal of your job," something to this effect.

Q. Did you sign it or initial it? A. I don't recall.

Q. Did you show it to Mr. King prior to posting it on the bulletin board? A. Yes.

Q. What did he say? A. It was all right. This was his idea.

Q. Now, as to the meeting concerning banquets and things of this nature, were you consulted, did you participate in those meetings? A. Yes.

[529] Q. Were you consulted as to the girls who were to work at those engagements? A. Sometimes.

Q. Were your recommendations followed when you made them? A. Not always.

Q. Could you give me a percentage of time that they were followed? A. Most of the time.

Q. Most, meaning at least 50%? A. Yes, sir.

Q. Possibly 75%; would it be that high or more or less? A. I don't know.

Q. Did the waitresses submit requests for days off to you? A. Yes.

Q. And after you received them, what action did you take, if any? A. Well, this schedule basically almost stayed

S. A. Nichols, for Petitioner, Cross.

from week to week, and then I would go in and confront Mr. King with it and if he could make the arrangements to do it, we'd do it.

Q. Do you recall a conversation with Lois Lopski regarding Pat Rose being discharged? [530] A. No, sir.

Q. You do not? A. No.

Q. I beg your pardon. Do you recall a conversation with Pat Rose regarding Lois Lopski being discharged? A. No.

Q. Do you recall telling Pat Rose that you discharged Lois Lopski because she was late all the time? A. No.

Q. You don't really recall that? A. No.

Q. Calling your attention to about April of 1973, do you recall Pat Rose asking you for a two-week vacation? A. Yes.

Q. And what did you tell her, if anything? A. Told her I'd have to ask Mr. King.

Q. Do you recall telling her you would see what you could do about it, or words to that effect? A. Possibly.

Q. Now, calling your attention to October 1972, this incident involving Ann Parisi, when you telephoned her at home and was unable to reach her, did you make a comment to the effect, "Well, that is it. She is through", after you hung up the [531] telephone? A. I don't recall that.

Q. You don't recall it? A. No.

Q. Did you ever tell Miss Rose that Mr. King told you it was your job to fire employees? A. No.

Q. Were these . . . were there notices posted for your attendance at the meeting that the Employer, I think you described them as being conducted weekly? A. No.

Q. Never seen any notice posted? A. Pardon me?

Q. Never seen any notices posted as to who were to attend those meetings? A. No.

Q. Do you in effect select the waitresses to work the parties and those types of engagements? A. Repeat the question, please.

S. A. Nichols, for Petitioner, Cross.

Q. Do you select waitresses to work parties? A. Yes.

Q. How do you determine which waitresses are to work which parties? A. (No response)

Q. How do you make your determination is what I'm [532] asking? A. By their ability.

Q. Do you consult with anyone prior to making those selections? A. Yes.

Q. Who do you consult with? A. Mr. King.

Q. And he approves the people that you select; is this what you are saying? A. Yes.

Q. Now, did you telephone Ricki Booth to notify her of her being discharged? A. No.

Q. You did not? A. No.

Q. I show you again what has been marked Regional Director's Exhibit No. 5 and ask you to read this paragraph. A. Yes.

Q. Okay. Now, do you wish to. . .does that refresh your recollection? A. Yes.

Q. Now, could you describe that to us, please? A. Of what, Ricki Booth?

Q. Yes. [533] A. Well, Mr. King did ask me to call her and tell her that she was dismissed and her and I were very good friends, and this upset me and I did start to cry and Mr. King called Ricki Booth and dismissed her for breaking company policy.

Q. Now, did Mr. King indicate to you that that was your job to call her at that time? A. No.

Q. And you did not tell anyone that this was said to you by Mr. King; is this correct? A. Right.

Q. Do you pass out the pay checks to employees? A. I have.

Q. Oh, all right. You indicated during the examination by Mr. Putrino, that you received certain insurance benefits. Do

S. A. Nichols, for Petitioner, Cross.

you recall that, that you are covered by certain Blue Cross-Blue Shield benefits? A. Well, we had insurance there.

Q. And this was also received by the other waitresses as well as yourself? A. Yes.

Q. Did you receive any benefits that were not received by the other waitresses? A. No.

Q. When employees requested days off and/or vacations from you, did you make a recommendation to Mr. King of [534] whether those requests should be approved? A. No.

Q. You just submit them to him without comment? A. Yes.

Q. Does he ask you any questions as to the availability of employees as whether it should be granted or not? A. No.

Mr. Newsome: No further questions.

Hearing Officer: Mr. Drenning?

Mr. Drenning: Mr. Hearing Officer, could I have a brief recess to review the testimony, my notes?

Hearing Officer: Yes. Five minutes.

(Short recess taken)

Hearing Officer: Back on the record, please, Mr. Drenning.

CROSS EXAMINATION:

Q. (By Mr. Drenning) Mrs. Nichols, if I can, first with reference to the numbers of waitresses working, I think in response to someone's question you indicated that five waitresses worked the 7:00 to 3:00 shift and another five worked the 5:00 to 10:00 shift in the afternoon? A. Yes.

Q. Is that year-round or just in the busy season? A. No.

[535] Q. No, what? A. Well, in the busy season there is more.

Q. There is more? A. Than five, yes.

Q. Five estimation. . . . five is your estimation as to what, the average for the slow season or what? A. Yes.

S. A. Nichols, for Petitioner, Cross.

Q. How many waitresses would you have in the busy period? A. Six or seven.

Q. Six or seven. A. Yes.

Q. Would there be more than one hostess when it was busy? Can you hear me all right? Would there be more than one hostess during the busy season? A. Yes.

Q. Would they both be working at the same time? A. Yes.

Q. Would each hostess have responsibility for seeing that the tables were attended to and customers properly served and so on? A. Yes.

Q. You indicated in your testimony that you received \$1.77 per hour. Do you know at the time when you received that wage, whether all hostesses received the same wage? [536] A. Yes.

Q. Your answer is yes, they all did? A. Yes.

Q. You also indicated, I believe, that you took a vacation in '72. That was a one-week vacation? A. Yes.

Q. That was after a year or more of employment? A. Yes.

Q. Do other hostesses, do you know, receive the same vacations; they all receive a week? A. Yes, they are eligible.

Q. They receive compensation reckoned on their average weekly pay? A. Yes.

Q. All hostesses receive that? A. Yes.

Q. I don't want to embarrass anyone, but you, could you just turn your attention to Ricki Booth and describe the conversation between you and Mr. King. First let me ask you, Mrs. Nichols, what did Ricki Booth have. . . Ricki Booth had some involvement, I gather, with an Innkeeper, a personal involvement with an Innkeeper at the time of her termination? A. Yes.

Q. What did Mr. King tell you when he asked you to [537] call her? A. He just said. . . I think we were just talking about it. He didn't actually state; get on the phone and tell her she was dismissed. We talked about it. He was asking me do I know anything about it.

S. A. Nichols, for Petitioner, Cross.

Q. What . . . was Mr. King asking you for any information relative to the nature of their arrangement or was he asking you questions about her work habits? A. Work habits.

Q. Did he get into questions of personal involvement with the Assistant Innkeeper, at the time? A. No.

Q. He did not? A. No.

Q. Why did he ask you then, to make this investigation? A. Well, I think it was maybe a day or so afterwards maybe, that we talked about it again and then, when he came out and asked me about if I knew what was going on, and I finally said, yes.

Q. So I can be clear in time, this was a conversation that took place in Mr. King's office, first of such conversations dealing with Ricki Booth? A. Possibly, yes.

Q. You say the next day there was an additional [538] conversation between you and Mr. King? A. Yes.

Q. Again, I don't mean to embarrass anyone; you suggested there was some substance as to the arrangement between the Innkeeper and Mrs. Booth? A. Yes.

Q. Then did he ask you to call Mrs. Booth; for what purpose? What did he tell you? A. I don't really recall exactly.

Q. Did he ask you to find out how serious it was? A. I don't really recall exactly the words.

Q. What next; did you call Mrs. Booth? A. No.

Q. You did not call her? A. No.

Q. What did you say to Mr. King? A. I told him I didn't want anything to do with it, because her and I were very close friends. I didn't want to get involved.

Q. Do you know of your own knowledge what Mr. King did? A. Could . . . he did take care of it himself.

Q. Did he call her? A. Yes.

Q. Was she subsequently fired; do you know? [539] A. I don't know.

S. A. Nichols, for Petitioner, Cross.

Q. Did she quit? A. She was dismissed.

Q. She was dismissed? A. Yes.

Q. But you are not clear on the circumstances surrounding that dismissal, but you know she was dismissed? A. Yes.

Q. With respect to the selection of waitresses to work various parties, Mrs. Nichols, when you were employed at the Inn, would Mr. King indicate preference for a particular waitress to work a particular party? A. Yes.

Q. Would he ask you to see to it that that waitress, that particular girl worked that particular party? A. Yes.

Q. Would the so-called sales person at the time make the same request. . . A. Yes.

Q. Would you do that, would you honor that request? A. Yes.

Q. How about the chef; did he also inform you that he liked a particular waitress to cover a party? A. Yes.

[540] Q. Did you honor that request? A. Yes.

Q. Did you have other parties or other people that requested or directed you to see to it that waitresses worked a given party? A. Yes.

Q. Who would that be? You testified that Mr. King did and the chef did and the sales person; would there be anybody else? A. Like amongst themselves, because they'd see there was a good party coming up, and they'd call me over and say, "Grandma, how about if I could work that party?"

Q. You're making reference to the waitresses themselves? A. Right.

Q. You also indicated in your testimony that, I believe the question was in reference to changing the table if the workload required it for some such thing; do you recall the question and answer? A. You mean the girls when they couldn't handle it, just going and giving the table to somebody else?

S. A. Nichols, for Petitioner, Cross.

Q. Yes. A. I think I said no, I would go and ask the girl, you know.

[541] Q. If she was having trouble? A. Right, "Can you handle that table?" And then put somebody there. Not just because of my judgment, "You can't handle it."

Q. Did all hostess-cashiers at the Holiday Inn when you were employed there, have the same responsibility? A. Yes.

Mr. Drenning: I have no more questions.

Mr. Putrino: At this time I'd like to request the statement.

Mr. Drenning: I don't know what the law is on this. For the sake of the record I will preserve my objections. I don't believe that Mr. Putrino is entitled to it by reason of Mrs. Nichols having been called as his witness. I frankly don't know the law. As I understand the request. . . I wish I knew, but I don't know the section under it. I don't think he's entitled to the affidavit. I wish to preserve that objection for the record.

Hearing Officer: I think the witness has testified at some length at this point. So I will comply with Mr. Putrino's request.

Mr. Putrino: Are we going to adjourn, Mr. Hearing Officer?

[542] Hearing Officer: Would you need perhaps five minutes to look at that?

Mr. Putrino: Yes.

Hearing Officer: Let's take five minutes, please.
(Short recess taken.)

S. A. Nichols, for Petitioner, Re-direct.

Hearing Officer: Back on the record. Mr. Putrino.

RE-DIRECT EXAMINATION:

Q. (By Mr. Putrino) Miss Nichols, I believe you testified earlier that you had not been working at the Holiday Inn for the past three months. Can you tighten up that date at all? A. Would you say that with this being October 10; would you say it would be August or July? A. No, before that.

Q. Before July? A. June. May or June.

Q. May or June? A. Yes.

Q. Can you tell us when you first interviewed for either of the two positions that you were working on? A. No, I can't recall.

Q. Would it have been in February? [543] A. No.

Q. March? A. Well, it's just like maybe three. . . I will say a month before I left the place of employment.

Q. Would that be about April or May? A. May.

Q. If you left in June, it would be in May? A. Yes.

Q. If you left in May it would be April? A. No, I was there in April, I do know that.

Q. You were there in April? A. Yes.

Q. Did you advise Mr. King that you would be leaving the Holiday Inn? A. No.

Q. Could you tell us why you did not? A. He was not there.

Q. Did you advise Mr. Chieffo that you would be leaving? A. Yes.

Q. Or anyone else, any other superior? A. Yes.

Q. When did you do that? A. I don't recall the exact date.

Q. How much notice did you give them? [544] A. Two weeks.

Q. So if you left in the middle of May you gave them notice about the first of May; is that right?

S. A. Nichols, for Petitioner, Re-direct.

Mr. Drenning: I don't wish to object but I don't understand the relevancy of this particular line of questioning. It seems to be besides the point.

Hearing Officer: What is the purpose, Mr. Putrino, of asking the witness whether they gave notice?

Mr. Putrino: I'm inquiring as to the Employer's knowledge of when her employment as a member of the bargaining unit, allegedly would cease.

Hearing Officer: All right, go ahead.

Q. (By Mr. Putrino) You gave notice approximately the first of May if you quit by the middle of May; is that right? A. I don't know.

Q. You said two weeks? A. I gave them two weeks notice. I worked a full two weeks.

Q. Did you tell them before you gave that actual notice, that you were looking for something else? A. No.

Q. You never did? [545] A. No.

Q. Now, you testified on cross-examination that there were times when there were two hostess-cashiers on duty at the same time? A. Yes.

Q. Does that mean that. . .let's take the 7:00 to 3:00 shift. There were times when there were two hostess-cashiers scheduled to work 7:00 to 3:00? A. Right.

Q. Were you involved in any of the interviewing of persons who were hired as hostess-cashiers or part-time hostess-cashiers? A. Possibly.

Q. While you were employed at the Holiday Inn, can you tell us how many part-time hostess-cashiers there were? A. Three.

Q. Three. And is that throughout the entire time that you were a hostess-cashier, the entire year? A. I believe so.

Q. How many full-time hostess-cashiers were there? A. Possibly four, five.

S. A. Nichols, for Petitioner, Re-direct.

Q. Full-time? A. Yes, sir.

[546] Q. During the time that you were a hostess-cashier. . . A. Yes.

Q. . . . can you tell us the names of the full-time hostess-cashiers? A. That's Parisi was one. Marilyn Pantano. Kathy Garigal. Sue Sam. Karen Pierce.

Q. You say Pantano? A. Marilyn Pantano.

Q. Part-time or full-time? A. Just the summer.

Q. Sam, was she part-time or full-time? A. Full-time.

Q. Garigal, was she part-time or full-time? A. Full-time.

Q. So the full-time Hostess-Cashiers would be Garigal, yourself and who else? A. Parisi.

Q. When did she become a hostess-cashier? A. Through the summer.

Q. What summer? A. This last.

Q. '73? A. Yes.

Q. Do you recall when she was made hostess-cashier, exactly? [547] A. No.

Q. Was she hostess-cashier when you were there? A. Yes.

Q. Were you breaking her in to take your place? A. No.

Q. Was anyone training her to take your place? A. Well, she came in and worked with me, watched what I did, but she worked with the other girls also.

Q. She replaced you; is that not true? A. No.

Q. She did not replace you? A. No.

Q. She started the summer of '73; is that right? A. Yes.

Q. That would be June of '73? A. No, she got out of school a little early.

Q. May of '73? A. I don't know.

Q. May of '73? A. I don't know.

Q. She goes to school; is that right? A. Yes, I believe so.

Q. Any other full-time hostess-cashiers? A. Kathy Garigal.

S. A. Nichols, for Petitioner, Re-direct.

[548] Q. We have covered her, her and yourself. A. Beth.

Q. You mentioned her. A. There was a couple that left.

Q. Anyone else? A. No.

Q. So until Beth Parisi started as Hostess-Cashier, there were really only two full-time hostess-cashiers? A. No.

Q. Can you tell us the names of some of the others? A. Beth Parisi. She worked 40 hours a week.

Q. She started in the summer of '73. I'm talking about before that time. A. I don't know.

Q. Pantano you said worked only summers; is that right? A. Yes, whenever she came home on vacation, she would come and help out.

Q. I show you what is marked for identification as Regional Director's Exhibit 4 and I direct your attention to the first paragraph. Sorry. Let me see that. Second paragraph of that affidavit, and ask you if that refreshes your recollection as to the number of full-time hostesses? A. Right.

[549] Q. Does that refresh your recollection? A. Yes.

Q. Now, how many full-time hostesses were there? A. Pardon me?

Q. How many full-time hostesses were there? A. When?

Q. At the time that you were employed as hostess-cashier? A. The whole time, now.

Q. Let's take January until the time you left in '73? A. Two.

Q. I believe you testified that you weren't certain of the year that you became employed as a waitress at the Holiday Inn. Do you have any better recollection now of when you first started as a waitress? A. No, just when they opened up.

Q. Do you have any recollection as to how long you served as a waitress? A. No.

Q. On cross-examination you were asked about your . . . what action you take when a particular waitress

S. A. Nichols, for Petitioner, Re-direct.

assigned to a section can't handle a table and you said you'd go over and ask them if they needed help; [550] is that right?
A. Yes.

Q. Was there ever a time when you disagreed as to her decision as a waitress, a waitress's decision as to whether they needed help? A. I don't recall.

Q. In other words there was never a time when a waitress told you no, she didn't need help and you assigned someone else to help anyway? A. I don't recall, sir.

Q. You testified that Mr. King asked you if you were familiar with Miss Booth's work habits when you first talked to him about her; is that right? A. Yes.

Q. And then you testified that in the conversation with him he asked you to call her up and find out what her status was with the Assistant Innkeeper; is that right? A. No.

Q. Did he ask you to call her up and tell her that she would have to be let go or she would be terminated? A. Yes.

Q. So I believe you said you refused because of your personal relationship with her? A. Right.

[551] Q. You testified that at times Mr. King or the chef or a sales representative would indicate a preference for a waitress and then you would accept their request for a particular waitress and assign her to a banquet; is that right? A. Would you repeat that, please?

Q. You testified that there were times when either Mr. King or the chef or someone else would indicate a preference for a particular waitress to work a particular banquet and you would assign that waitress to work a banquet or schedule that waitress to work that banquet; is that right? A. Yes.

Q. How often would you say that happened, percentage?
A. I don't know.

Q. More than half? A. Possibly.

Q. Less than half? A. I don't know.

Q. You have no idea whatsoever? A. No.

S. A. Nichols, for Petitioner, Re-direct.

Q. Was that one particular person who made requests or who indicated a preference for a particular waitress? In other words, did Mr. King indicate a preference more frequently than the chef or someone else? [552] A. Yes.

Q. Who came to you most often with a request for a particular waitress? A. Mr. King.

Q. Was it usually the same waitress? A. No, not always.

Q. Was it usually the same waitress? A. No.

Q. Since you became a hostess-cashier, Miss Nichols, can you tell me approximately how many waitresses were hired by the Holiday Inn? A. Wouldn't have any idea.

Q. Wouldn't have any idea.

Q. No idea whatsoever? A. No.

Q. Can you tell us what difference in benefits you received when you became a hostess-cashier? A. Didn't get any benefits.

Q. Was there any difference in your life insurance coverage, was the amount increased? A. No.

Q. It was not. A. No.

Q. Was there any addition to your hospitalization coverage? A. No.

[553] Q. How many bus boys worked on the 7:00 to 3:00 shift? A. Two.

Q. From January of '73 to the time you left, whenever that was, which shift did you spend most of your time on, the 7:00 to 3:00 or 5:00 or 10:00? A. I'd say equally.

Q. And you alternated every week? A. Yes.

Q. How many bus boys were hired since you were back as hostess-cashier? A. I don't know.

Q. Did you interview any bus boys for employment by the Holiday Inn? A. Yes.

Q. Do the bus boys work in the dining room together with the waitresses? A. Yes.

S. A. Nichols, for Petitioner, Re-direct.

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: Back on the record.

Q. (By Mr. Putrino) Miss Nichols, were you involved in interviewing. . . I think I'm mispronouncing. . . Miss Garigal or Miss Garigel. . . A. No.

[554] Q. Can you tell us when she became a hostess-cashier? A. No.

Q. You don't know? A. No.

Q. Can you tell us whether it was before or after you became a hostess-cashier? A. After I became.

Mr. Putrino: I have nothing further.

Mr. Drenning: I have no questions.

Mr. Newsome: I have no questions.

EXAMINATION:

Q. (By the Hearing Officer) Miss Nichols, did you ever tell Mary Strobel that she could go ahead and have some time off? A. I don't recall.

Q. Was there a waitress at the restaurant named Joyce Langman? A. Yes.

Q. Was she hired sometime in August of '72? A. Possibly.

Q. Did you interview her? A. Yes.

Q. Did you talk to Mr. King, the Innkeeper, with respect to Miss or Mrs. Joyce Langman's employment? A. Yes.

[555] Q. Did you recommend that Joyce Langman be hired? A. Yes.

Q. Was she working 40 hours a week at first? A. I don't recall.

Q. Did there come a time when Joyce Langman's hours were reduced? A. Possibly.

Q. In the winter time? A. Possibly.

Q. Did you tell Joyce Langman in the winter of '72 that

S. A. Nichols, for Petitioner, Re-direct.

there had to be a change in shifts and that you would have to give the hours to the more senior waitresses? A. I don't know.

Q. You don't remember or it didn't happen? A. I don't remember.

Q. You became hostess-cashier around May, '72. A. I believe so.

Q. Who promoted you to that position? A. Mr. King.

Q. In answer to a question, the question being whether you participated in scheduling waitresses vacations, your answer was "yes". A. I don't remember, now.

Q. Did you have anything to do with scheduling waitresses vacations? [556] A. Yes.

Q. Would you explain what you had to do with that? A. Well, they had to wait til the slow season to have one unless we had enough help where somebody could fill in for them and it was up to Mr. King whether they could have their vacation or not, whether they could go, what time of the year or when.

Q. Did the waitresses give you their respective requests for the time they wanted off? A. Yes.

Q. And then, what if anything did you do with those requests? A. I'd go to talk with Mr. King about it and see what could be done about it.

Q. Would he say, did he say what could be done about it?

A. Yes.

Q. What if anything did you do then, after he decided that? A. Well, if he said yes, I'd tell the girl that she could have her vacation or go.

Q. Would you write up a schedule based on such decisions? A. Yes.

Q. Did you post that schedule? [557] A. Yes.

Q. At the restaurant are certain sections of the dining room designated as stations for waitresses? A. Yes.

S. A. Nichols, for Petitioner, Re-direct.

Q. Was it your testimony that you did not designate which section of the dining room would be served by a particular waitress, but that simply the earlier girl took a particular section? A. Yes.

Q. Is that what happened? A. Yes.

Q. And so you did not determine which section went to which waitress? A. No.

Q. Was that always true while you were hostess-cashier?
A. Most of the time.

Q. Did you ever prepare weekly work schedules for other hostesses? A. Yes.

Q. For whom did you prepare such, in 1973? A. Well, it would be Marilyn Beth, Kathy Garigal, Sue Sam, Karen Pierce.

Q. What is Beth's last name, is it Barisi, B-a-r-i-s-i or P-a-r-i-s-i? A. "B", Barisi, "B".

[558] Q. "B"? A. Right.

Q. During your work as hostess-cashier you interviewed approximately 20 persons for positions as waitress at the inn? A. Yes.

Q. About how many of those did you recommend, if you did, that they be hired? A. I don't know.

Q. Would you say approximately how many of the 20 that you interviewed were in fact hired? A. I don't know.

Q. Would it be half of them? A. Possibly.

Q. When you were hostess-cashier did you have authority to give waitresses days off? A. No.

Q. In 1973, when you were hostess-cashier, or in '72, did waitresses request days off of you? A. Yes.

Q. What if anything did you do with those requests? A. When we are making up the schedule, I'd tell Mr. King and he decided whether they could have the day off or not.

Q. Of the approximately 20 persons whom you [559] have interviewed for jobs as waitresses, do you know whether Mr.

S. A. Nichols, for Petitioner, Re-direct.

King or an Assistant Innkeeper subsequently interviewed those applicants? A. Yes.

Q. You do know what he did, or one of those did, Mr. King or the Assistant Innkeeper? A. Yes.

Q. Or Assistant Innkeeper? A. Interview?

Q. Yes. A. Right.

Q. Yours was not the only interview of the 20? A. No.

Q. When waitresses felt ill, did they report their illness to you? A. Sometimes.

Q. Did Susan Rose report at anytime an illness to you? A. Possibly.

Q. What if anything did you do when a waitress would report to you that she was ill? A. Well, I'd go and tell Mr. King and he'd usually say, "Try to find someone to replace her."

Q. Before you went to Mr. King did you tell the waitress to go home? [560] A. No.

Hearing Officer: No further questions. Mr. Putrino.

Mr. Putrino: Yes.

RE-DIRECT EXAMINATION:

Q. (By Mr. Putrino) Miss Nichols, is it true that you started in April of '72 at the Holiday Inn as a waitress? A. I don't know.

Mr. Putrino: May I have the affidavit, please?

Q. (By Mr. Putrino) I show you Regional Director's Exhibit 4 and ask you to read the first paragraph there yourself. Then, I'd like to ask you did you start as a hostess-cashier in April of 1972 at the Holiday Inn. A. Yes.

Q. In April of '72? A. Yes.

Q. And you left your employment at the Holiday Inn in May of '73? A. I believe so.

S. A. Nichols, for Petitioner, Re-direct.

Q. And do you know when the Holiday Inn opened? A. No, not. . . 1971, sometime then; June, July, August.

Q. Can you tell us now, if you have any better [561] recollection as to how long you were employed as a waitress before you became a hostess-cashier? A. No.

Q. Not at all? A. No.

Q. Can you tell us when you were first employed at the Holiday Inn? A. I just said.

Q. April of '72? A. No. That is when I was a hostess-cashier.

Q. When did you become employed by the Holiday Inn for the first time? A. I don't recall.

Q. Was it in '71? A. Possibly, yes.

Q. Was it in '72? A. I don't know.

Q. Where did you work before you started at the Holiday Inn? A. Village Squire.

Q. Until when? A. Until when, what?

Q. When did you leave the Village Squire? A. When I went to the Holiday Inn.

Q. Can you pinpoint approximately when you left the [562] Village Squire? A. No.

Q. How long were you out of work? A. I wasn't.

Q. Who was the hostess-cashier when you first started at the Holiday Inn? A. I don't recall.

Q. You indicated that with requests for vacations or requests for days off, you would talk to Mr. King; is that right? A. Yes.

Q. Would he ask your recommendations? A. Possibly.

Q. Would he ask if you were able to cover that vacancy with someone else? A. Possibly.

Q. Would he ask if this girl was entitled to a vacation? A. No.

Q. Would he check your schedules? A. Yes.

Q. With regard to this question, in other words, when you

S. A. Nichols, for Petitioner, Re-direct.

went in and said someone wants off next Tuesday, did he say, "Okay, bring in your schedules." A. No.

[563] Q. Did he usually ask your opinion as to whether a girl should get a vacation when she wanted it or get a day off when she asked for it? A. Would you repeat that, please?

Q. Did Mr. King usually ask your opinion as to whether the girl should get her vacation or day off when she requested it? A. Yes.

Q. Do you know of any time when he did not accept your recommendation? A. No.

Mr. Drenning: I missed the last question and answer.

(The pending question and answer read back by the Reporter.)

Q. (By Mr. Putrino) Miss Nichols, do you have any recollection whatsoever as to whether any of the 20 girls you interviewed were not hired? A. No.

Q. You have no recollection? A. No.

Q. Do you know of any occasion when you recommended a waitress, and in a discussion with Mr. King or someone else, he told you some particular characteristic about that waitress that caused him to disagree with your [564] recommendation? A. I don't remember.

Q. Did he ever discuss with you what the purpose of his interview with waitresses that you interviewed was? A. No.

Q. Did you ever sit in on one of the interviews that he conducted? A. No.

Q. Did anyone else besides him ever conduct an interview when he was not present or available? A. Possibly.

Q. Like who? A. The Assistant Innkeeper.

Q. Anyone else? A. I don't know.

Mr. Putrino: I have nothing further.

S. A. Nichols, for Petitioner, Re-cross.

RE-CROSS EXAMINATION:

Q. (By Mr. Drenning) Just one. Mrs. Nichols, the policy of the Holiday Inn, is it not, is to give an employee one week vacation after one year of work? A. Sorry. I didn't hear you.

Q. The policy of the Inn, is it not, to give an employee one week's vacation after one year of work? [565] A. Yes.

Q. You had no part in setting that policy, did you? A. No.

Mr. Drenning: No more.

RE-CROSS EXAMINATION:

Q. (By Mr. Newsome) One question. Miss Nichols, how do you know that Mr. King interviewed applicants after you had an interview with them; how do you know that? A. I have seen people go in and talk to him.

Q. Do you know what they were talking about when you saw them? A. Well, they have an application for employment.

Q. They have an application for employment in their hand or in their possession? A. Yes.

Q. You didn't witness any of the conversation to your personal knowledge, is that correct? A. (No response).

Q. You didn't overhear any of the conversation, did you? A. No.

Q. Now, you actually saw all of the applicants that you interviewed subsequently go in with an application in their hand and talk to Mr. King; is this correct? [566] A. No.

Q. Of the applicants that you interviewed, approximately how many did you subsequently see go in and talk to Mr. King? A. I don't know.

Q. Would it be less than half or more than half? A. Possibly.

Q. Possibly which one? A. Might be more.

Q. Might be more? A. I don't know.

Q. Did Mr. King ever instruct you to tell the applicants

S. A. Nichols, for Petitioner, Re-direct.

that you had interviewed to come see him at a later date? A. Yes.

Q. What did he tell you? When did the conversation take place and what did he say? A. Would you repeat that, please.

Q. First, when did the conversation take place wherein Mr. King instructed you to tell applicants that you had interviewed to come in and see him at a subsequent time? A. Possibly maybe after I . . . they come possibly to the front desk, fill out. . .

Q. But you don't have a specific recollection of that? [567] A. No.

Q. You don't have any specific recollection of that? A. No.

Q. Your present testimony is that you don't know as a fact that Mr. King interviewed all applicants that you interviewed, subsequently; is this your present testimony? A. (No response.)

Q. You don't have any direct knowledge that Mr. King interviewed the waitresses that you personally interviewed, do you? A. Possibly some.

Q. When you say "possibly", would you have anything to base this possibility on? A. No.

Q. You have nothing to base it on? A. No.

Mr. Newsome: That is all. No further questions.

Mr. Drenning: No more.

Mr. Putrino: A few more. May I ask one more.

RE-DIRECT EXAMINATION:

Q. (By Mr. Putrino) You testified earlier that you took your vacation, I believe, in the spring of '73; is that right? A. No, I don't know.

[568] Q. Do you know when you took your vacation? A. February.

S. A. Nichols, for Petitioner, Re-direct.

Q. '73? A. It was ...

Q. Was it winter? A. Yes.

Q. And it was in '73? A. Uh huh, yes.

Q. Was that the first vacation you had while working at the Holiday Inn? A. Yes, I believe so.

Q. Was that the first vacation which you were eligible for while working for the Holiday Inn? A. Yes.

Q. Does that help you pinpoint your date of employment with the Holiday Inn? A. No.

Q. It does not? A. No.

Mr. Putrino: Nothing further.

Hearing Officer: You began working as a waitress at the Holiday Inn shortly after it opened?

The Witness: Yes.

Hearing Officer: This would be a month or so?

The Witness: Uh huh.

[569] Hearing Officer: Your answer is "yes"?

The Witness: Yes.

Hearing Officer: Nothing further. Anything further of this witness?

Mr. Drenning: No.

Mr. Newsome: No.

Mr. Putrino: No.

Hearing Officer: Thank you very much. You are excused.

(Witness excused.)

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Putrino: I'd like to call Dorothy Zielinski.

D. Zielinski, for Petitioner, Direct.

Whereupon,

DOROTHY ZIELINSKI was called as a witness by and on behalf of the Petitioner and, being first duly sworn, was examined and testified as follows:

Hearing Officer: Give your full name to the Reporter.

The Witness: Dorothy K. Zielinski.

Hearing Officer: Spell the last name.

The Witness: Z-i-e-l-i-n-s-k-i.

DIRECT EXAMINATION:

Q. (By Mr. Putrino) Miss Zielinski, were you [570] employed by the Holiday Inn of Dunkirk-Fredonia at one time?

A. Yes.

Q. Can you tell us when you were first hired? A. '71.

Q. Was that about the time that it first opened? A. Yes, it was.

Q. Can you tell us approximately the month that it was when you first were hired? A. It was, I think, June.

Q. And did you give a statement to an Agent of the National Labor Relations Board? A. Yes, I did.

Mr. Putrino: At this time I'd like to request that statement.

Mr. Drenning: I give the same grounds. I would reiterate the objection I made earlier in connection with Mrs. Nichols' testimony.

Hearing Officer: You have the same position, Mr. Newsome, that you did on the other?

Mr. Newsome: Yes.

Hearing Officer: I think I will deny it for the same reasons. Proceed, Mr. Putrino.

D. Zielinski, for Petitioner, Direct.

Q. (By Mr. Putrino) Can you tell us how long you were employed at the Holiday Inn? [571] A. Approximately two years.

Q. Can you tell us why you left the Holiday Inn? A. I was in financial difficulty and I had to seek other employment.

Q. What was your employment, what did you do while you were working at the Holiday Inn? A. I was a maid.

Q. Do you or did you know an employee by the name of Hancock who worked at the Holiday Inn? A. Yes, I do.

Q. Do you know if you were employed at the Holiday Inn in Dunkirk-Fredonia prior to her coming there or was she there when you started? A. She was there when I started.

Q. Do you know an employee by the name of Fitzpatrick? A. Yes.

Q. Can you tell us with regards to that employee, was she there when you started as well? A. Yes.

Q. Was there a period of time when Miss Fitzpatrick was not employed on the premises of Holiday Inn in Dunkirk-Fredonia; she wasn't on the premises and she wasn't working at that Inn? A. Off the premises?

No, not that I know of.

[572] Q. From the time that you started there, June of '71 to the time you left in May or June of '73, Mrs. Fitzpatrick was working at the Holiday Inn? A. No. Mrs. Fitzpatrick had to go and open up other inns.

Q. Did you ever talk with Mrs. Fitzpatrick about what her duties were? A. No, I didn't.

Q. Do you know when she left to go and open other inns? A. Yes.

Q. Can you tell us when that was? A. I can't remember the exact date but I know I had my first vacation under Mrs. Fitzpatrick so I had to be there a year, so it is '72.

Q. And do you have any recollection as to how long she

D. Zielinski, for Petitioner, Direct.

was gone from the Holiday Inn you worked at? A. I don't know how long it takes to open up an Inn, sir.

Q. How long was it before you saw her return to the Inn that you worked at? A. She came by in late '72 or early '73 for two or three days. She makes periodical visits to see that we [573] are getting along all right.

Q. Do you have any way of recalling when exactly, let's say the month in '72 that Miss Fitzpatrick first left to go and open another Inn? A. I can't remember.

Q. Can you tell us if it was the summer, the fall or the winter? A. It would have to be after August, sir, because that is when I took my vacation.

Q. She left sometime after August? A. Yes.

Q. And you say she came back for two or three days in the latter part of '72 or early '73? A. Right.

Q. After she was back for two or three days, can you tell us how long she was gone for the second time? A. No.

Q. Well, do you have any idea of the number of weeks or months? A. No.

Q. Was she there when you took your next vacation? A. I didn't take my next vacation.

Q. Was the ... was she there in the summer of '72? A. '72?

Q. I'm sorry. '73. [574] A. '73.

Q. Yes. A. Yes.

Q. Do you know when she came back in '73? A. March, I think. I'm not sure.

Q. March. A. I'm not sure but I think it was March, and she was there when I left.

Q. Were you assigned to particular duties as a maid at the holiday Inn? A. Well, can you describe that a little?

Q. Well, for example, are you assigned a particular section of the Inn? A. Yes.

D. Zielinski, for Petitioner, Direct.

Q. A particular set of rooms? A. Yes.

Q. Did you have the same set of rooms during the whole two-year period that you worked there? A. Oh, yes.

Q. When Mrs. Fitzpatrick first left sometime after August of '72, were you advised by anyone that Miss Hancock was taking her place? A. No.

Q. You were not? A. No.

[575] Q. Did Miss Hancock ever give you directions as to the performance of your duties? A. She only told us when we had left something out of our room and we had to go and place it in.

Q. How did she know that something was missing from the room? A. How?

Q. That you had left something out? A. Well, we had certain items that we were to place in the rooms, like soap, bath towels.

Q. How did she know an item was missing from a room? A. She would check it.

Q. Did Mrs. Fitzpatrick check the room before she left? A. Oh, yes.

Q. Who made up your schedules for your days off when Miss Fitzpatrick was there? A. When Miss Fitzpatrick was there, Mrs. Fitzpatrick did.

Q. Who made them when Mrs. Hancock took over? A. Mrs. Hancock did.

Q. If you had to call in sick, were you instructed to call Miss Hancock . . . strike that. Were you instructed to, when Mrs. Fitzpatrick was there, were you instructed to call Mrs. Fitzpatrick with regard to [576] calling in sick? A. No one instructed me who to call. I called the Inn.

Q. Then who did you speak to? A. Then I was put into housekeeping.

Q. Who did you speak to? A. Whoever I got on the phone there I told.

D. Zielinski, for Petitioner, Direct.

Q. You had no particular person to ask? A. No.

Q. How did you get your pay check? A. I earned it.

Q. How did you physically get it, Mrs. Zielinski? A. It was handed to me.

Q. Who handed it to you? A. Mrs. Fitzpatrick.

Q. When she wasn't there, who handed it to you? A. Mr. King sometimes and then he would give them to Mrs. Hancock to bring to us.

Q. Mrs. Zielinski, did you have any conversation with any of the attorneys for the Holiday Inn or Mr. King when you received this subpoena to appear here this morning? A. No, I only saw Mr. King when I came here.

Q. You didn't call in or talk with him? A. No.

[577] Q. It is true, Mrs. Zielinski, that you were subpoenaed to appear here; is that right? A. Right.

Q. Can you tell us, have you ever participated in what I will call a room check or this checking that you indicated Mrs. Fitzpatrick or Mrs. Hancock did? A. No, I haven't.

Q. You never did? A. No.

Q. Okay. Do you know what the purpose of this check is?

A. Cleanliness.

Q. In other words, to check and see if everything that was supposed to be done is done? A. Right.

Q. Did you ever receive any complaint about not doing your job properly? A. No.

Q. Were you ever advised by either Mrs. Fitzpatrick or Miss Hancock that you omitted something, you forgot to put something in the room? A. Every girl was.

Q. Not meaning to talk about the quality of your work.

[578] A. No, every girl was.

Q. This was done by either Mrs. Hancock or Mrs. Fitzpatrick; is that right? A. Right.

Q. How were you hired? A. Through Mrs. Fitzpatrick.

D. Zielinski, for Petitioner, Direct.

Q. And did you know of the job or did you see an ad in the paper; how did you come to get the job? A. I applied for it. It was in as an opening.

Q. You just walked in and asked? A. No, sir . . .

Q. How did you know about it? A. The ad was in the papers. Who placed them there, I don't know.

Q. Besides being interviewed by Mrs. Fitzpatrick did you talk to anyone else before you were hired? A. No.

Q. She told you you were hired? A. I had an interview on a Sunday.

Q. With her? A. Yes.

Q. Did she tell you right at the Inn that you would be hired? A. Told me to come in the next day, the following Monday.

[579] Q. Has there been much of a turn-over in the maids since you first started; in other words, have a lot of girls come and gone? A. Oh, quite a few.

Q. Has the Inn run ads in the newspaper for replacements? A. I don't know, sir.

Q. Have you ever referred someone that you knew to the Inn for a job as a maid? A. No.

Q. Have you ever seen anyone being interviewed by Mrs. Fitzpatrick or Mrs. Hancock? A. No.

Q. In other words the only interview you know of was your own? A. Right.

Q. Mr. King didn't sit in on that interview, did he? A. No.

Q. What was your hourly rate of pay when you were working at the Holiday Inn? A. \$1.85 an hour.

Q. What benefits did you receive besides that? Was there hospitalization? A. No. I had hospitalization through a company.

[580] Q. Which you obtained on your own? A. Yes.

D. Zielinski, for Petitioner, Direct.

Q. In other words Blue Cross did not provide you with hospitalization? A. No.

Q. I'm sorry. The Holiday Inn did not provide you with hospitalization? A. Yes . . . no, no. I paid that myself.

Q. I see. You selected the company that you wanted to go to and you paid it all yourself? A. They took it from my pay.

Q. Did you pick the company that you go to, that was going to cover your hospitalization? A. No. Insurance was insurance to me.

Q. In other words, that was a plan, there was an insurer that provided hospitalization to you and you paid for it; right? A. Yes.

Q. And the money was deducted by your employer, the Holiday Inn; is that correct? A. Yes.

Q. And the insurance company was selected by the Holiday Inn? A. I have no idea.

Q. You did not select it? [581] A. No.

Q. Did you have any life insurance that was provided to you by your employer? A. It was on the policy.

Q. And you paid for that yourself, as well? A. Yes, it was all in it.

Q. Did you stay at that same rate, \$1.85 throughout the two years that you were working there? A. Yes.

Q. Do you know what rate Miss Fitzpatrick was earning? A. I have no idea.

Q. Do you know what rate Mrs. Hancock was earning? A. No.

Q. You testified that you took your vacation in August of '72, and I guess you didn't take a second one; is that right? A. Right.

Q. And you testified that you talked to Mrs. Fitzpatrick about that vacation, is that it? A. Which vacation?

Q. The only one you took? A. My first.

Q. That's right. A. That's right.

D. Zielinski, for Petitioner, Direct.

[582] Q. You asked her, asked her if you could take your vacation? A. Yes.

Q. And you told her the time you wanted to take your vacation? A. Yes.

Q. And what did she tell you when you asked if you could take your vacation? A. What did she tell me?

Q. Right. A. She told me she would see if she could arrange my vacation for me.

Q. Did Mrs. Fitzpatrick make up the schedule? A. Yes.

Q. And Mrs. Hancock made up the schedule after Mrs. Fitzpatrick was not there? A. Yes.

Q. Are you aware of any of the other maids taking their vacation in the fall of '72 or spring of '73? A. No, sir, I don't know when any of the maids took their vacation except myself.

Q. Did you ever have to fill in for somebody that was on vacation? A. No, not that I know of.

Q. What was done in the way of scheduling when one [583] of the girls was going to be missing; do you know? A. Well, you really have to work in a motel to know, I think.

Q. Did you just cover and take extra rooms? A. There wasn't really that many rooms to cover; like maybe the girl that was taking a vacation, maybe, well, some rooms there is 14 ... some sections, 14 and some sections 10, and then maybe you have five rooms in a section that has been used.

Q. Who would do those five rooms or whatever, the rooms that were used? A. There would be a girl.

Q. Would she be an added girl or one of the regularly scheduled girls? A. I don't know.

Q. Were you ever assigned extra rooms to cover for someone who was out for a day or out for vacation? A. I was never assigned any extra ones, but I volunteered my help.

Q. Since you started there, during the two years that you were there, were new girls hired? A. Yes.

D. Zielinski, for Petitioner, Direct.

Q. Can you tell us during the period Mrs. Fitzpatrick was there, who was responsible for breaking them in or training them? [584] A. When Mrs. Fitzpatrick was there?

Q. Right. A. She was.

Q. And when Mrs. Hancock took over, who was responsible for breaking them in or training them? A. She was.

Q. Mrs. Hancock? A. Yes.

Q. Mrs. Zielinski, was there ever a time when you or any of the other maids asked to be reassigned to a different section of the motel? A. No, sir.

Q. Were there sections of the motel that were sought after? In other words, did the girls like some sections better than others? A. Not that I know of.

Q. Did you have any particular preference? A. No.

Q. During the time that Mrs. Hancock took over the duties of Mrs. Fitzpatrick, were you ever told by Mr. King or the Assistant Innkeeper ...

Mr. Drenning: I'm going to object to the question or the form of the question. I think it assumes facts that now are not in evidence.

Hearing Officer: Could I hear the question?

[585] Mr. Putrino: During the time Mrs. Hancock took over from Mrs. Fitzpatrick ...

Hearing Officer: Okay, just ...

Mr. Putrino: During the time Mrs. Hancock took over for Mrs. Fitzpatrick was there ever a time that Mr. King or the Assistant Innkeeper indicated that Mrs. Hancock was going to be the housekeeper or was the housekeeper?

Hearing Officer: I will permit that.

The Witness: They told ... never told us. Never told me that she was going to be a housekeeper.

D. Zielinski, for Petitioner, Direct.

Q. (By Mr. Putrino) I want to know if you ever learned that she was . . . did you learn that she had become the house-keeper? A. I assumed that she was, because she signed the payroll as housekeeper. She made a "HKPER", you know short form for housekeeper.

Q. Did she do anything that led you to believe she was a housekeeper? A. I found her a maid just like myself because she started with me.

Q. Aside from signing the payroll, aside from checking the rooms, aside from telling girls that they left, forgetting to leave something in a particular room; do you know if she ever hired or fired any maid? [586] A. It is in my affidavit.

Q. Well, do you know if she did? Do you recall now without looking at the affidavit if she ever hired or fired anyone? A. Three girls that I know of were hired, but she didn't fire these three girls.

Q. Did she hire these three girls? A. To the best of my knowledge.

Q. How do you know that, Mrs. Zielinski? A. The one told me.

Q. She told you that Mrs. . . . A. Mrs. Hancock hired her.

Q. How do you know that the other two girls were hired by Mrs. Hancock? A. They were all . . . they all lived in the same vicinity.

Q. Did they all start at the same time? A. Approximately.

Q. Do you know when that was? A. No.

Q. Was it in '72 or '73? A. It was in '73, I think, yes.

Q. And did either of them ever tell you that they were interviewed by Mrs. Hancock? A. No, they didn't speak of that.

[587] Q. Do you know if she fired anyone? A. I can't remember if she did.

Q. Do you know if she ever recommended that someone should be fired? A. No, I don't.

D. Zielinski, for Petitioner, Cross.

Q. Did either of the three girls that you said that you knew were hired by Mrs. Hancock, did either of them ever tell you that they were interviewed by Mr. King? A. No, they didn't tell me.

Q. Aside from those three girls, are you aware of any other maids that were hired by Mrs. Hancock? A. No, I don't know any of the others.

Q. Are there housemen that work with you? A. Oh, yes.

Q. And are the house ... when Mrs. Fitzpatrick was there, were the housemen under her in line of authority? In other words did she tell them what to do? A. I don't know.

Q. Were any housemen hired since Mrs. Fitzpatrick left, and let's say after August, 1972? A. Yes.

Q. Do you know who interviewed those housemen? A. No, I don't.

Mr. Putrino: Nothing further.

[588] Mr. Drenning: I have no questions at this time, Mr. Hearing Officer.

CROSS EXAMINATION:

Q. (By Mr. Newsome) Of the three girls that you say Mrs. Hancock hired, did you see Mrs. Hancock hire those girls? A. No.

Q. Do you recall, Mrs. Fitzpatrick returning to the Holiday Inn to correct certain problems in the housekeeping department? A. Yes, sir.

Q. Do you recall a conversation ... do you recall a meeting called by Mrs. Fitzpatrick of the housekeeping department? A. Yes, sir.

Q. Would you describe what was said at that meeting? A. She came in. We were ready to go out to the job, and she said, "We will have a meeting. You know why I am here." And we didn't know. She said, "I'm here to straighten out this mess."

D. Zielinski, for Petitioner, Cross.

Because three girls had walked out prior to that, three maids, and it left us short of maids that day.

Q. Do you recall whether or not Mrs. Fitzpatrick made any statements about girls going to the front office? [589] A. She said we weren't to go to the front office with problems which they weren't big ones, they were small ones, unless we saw her first. She was my boss, and that is who I went to.

Q. Did she say anything about going to see Mrs. Hancock? A. No, and when my statement was given, sir, we were referring to "her" and "she" and I think that he has written it down wrong because I sent to you for a copy of my affidavit.

Q. Just answer the question, Mrs. Zielinski. I don't want any narration of it. A. I was referring to Mrs. Fitzpatrick.

Q. So, she told you to go to her, meaning Mrs. Fitzpatrick and not Mrs. Hancock? A. Right.

Q. Okay. Did you request your vacation from Mrs. Hancock? A. No.

Q. Did you tell the Board Agent when you gave your statement that you requested vacation from Mrs. Hancock? A. No.

Q. But that is written in your affidavit. You said you had a copy? A. I never asked Mrs. Hancock for a vacation, sir. [590] I wasn't there long enough to get my second vacation. Mrs. Fitzpatrick gave me my vacation the first year I was there. I wasn't there long enough to take a second one.

Q. Okay. Now calling your attention to about the middle of May, 1973; do you recall having a conversation with Mrs. Fitzpatrick in a room wherein Mrs. Hancock was discussed? A. Where Mrs. Hancock was discussed?

Q. Yes, right. Do you recall the conversation? A. Yes, I do.

Q. Okay. Well, would you just tell us about that conversation? A. Well, it really wasn't a conversation because I

D. Zielinski, for Petitioner, Cross.

talked quite a bit with her and at that time she told me that Mr. Duglaris didn't want Ruth hiring or firing, and that was it.

Q. Did she say "hiring or firing" or "didn't want her hiring or firing anymore." A. No, she just said "hiring and firing."

Q. "Anymore" was not used? A. No.

Q. Now, you were out sick for about three weeks on one occasion; is that correct? A. Yes.

[591] Q. Who did you contact to notify that you were not coming in? A. I called Mrs. Hancock.

Q. What did she say, if anything? A. She didn't say anything, sir.

Q. Well, you called her and notified her that you were sick and wasn't coming in and she just hung the telephone up? A. Usually said, "All right."

Q. Said "All right". Did she say whether or not she was going to notify anyone? A. No.

Q. She didn't and said, "Okay"? A. "All right."

Q. Other than the three employees that you have testified to earlier, did other employees tell you they were hired by Mrs. Hancock? A. No.

Mr. Newsome: No further questions.

CROSS EXAMINATION:

Q. (By Mr. Drenning) Mrs. Zielinski, you mentioned that three girls have been hired while you were there and while assumedly Mrs. Hancock was acting as housekeeper and you indicated, I think in your testimony, that you thought they were hired by [592] Mrs. Hancock; is that right? A. Yes, sir.

Q. And do you know if those three girls talked with anybody else before they were hired? A. No, I don't.

Q. Do you know whether or not they had talked with anyone else? A. No, I do not.

D. Zielinski, for Petitioner, Cross.

Q. So it is possible they may have talked with someone else? A. It is possible.

Q. When Mrs. Fitzpatrick was at the Inn when it opened and for the period following that when Mrs. Fitzpatrick was here during the period, did you ever have occasion to go to Mr. King to discuss your job? A. To discuss my job?

Q. Or problems relating to the job? A. Oh, yes.

Q. When Mrs. Fitzpatrick was gone, did you ever also have occasion to go to Mr. King, while Mrs. Hancock was there? A. I never had to go down into the office, but I met Mr. King in the hall, the hallway.

Q. Did you discuss any work-related difficulties [593] that you had or problems that you had with Mr. King? A. No.

Q. With respect to new hires, as maids, Mrs. Zielinski, were they put with older maids for training, generally speaking? A. Yes.

Q. How long would it usually take to train a given maid? A. Oh, approximately a week or more.

Q. Would that new maid work side-by-side with the older girl until she had been trained? A. Yes.

Q. For the period that Mrs. Fitzpatrick was gone until she returned in February of '73, what assistance would that maid get from Mrs. Hancock while she was being trained; would Mrs. Hancock have anything to do with training her or would the old maid train her . . . or older maid, forgive me. Want me to rephrase that? You'd like me to rephrase that? A. No, no, she would work with us.

Q. This is the new hire? A. The new hired one. Then we would, the older maids would let her go into the room next to her and do the same job, then the maid would check and then Mrs. Hancock came to check to see if it was done right.

[594] Q. The older maid would discuss errors that the younger maid had committed, things of that sort? A. Right.

D. Zielinski, for Petitioner, Re-direct.

Q. If the younger maid made a cleaning error, what would the older maid do, point it out to her or clean it herself? A. No, point it out to her, and told her this had to be done and that had to be done.

Q. Occasionally Mrs. Hancock would stop in to check the progress? A. Yes.

Q. Did the older maid have as much to do with the training of the newer maid as Mrs. Hancock did, would you say? A. I would say so.

Q. Of the schedules that were made, Mrs. Zielinski, during the period of Mrs. Fitzpatrick's absence, those schedules were nothing more than pieces of paper indicating which rooms had been slept in the night before; isn't that right? A. Right.

Q. Nothing more or less involved in those schedules than that? A. No, just the room numbers.

Mr. Drenning: No more questions.

* * *

[596] Q. (By Mr. Putrino) Mrs. Zielinski, you say that you were hired the summer of 1971 and that in the summer of 1972, specifically in August, you took your first vacation; is that right? A. Yes.

Q. And requested that vacation of Mrs. Fitzpatrick? A. Yes.

Q. She was the housekeeper at that time? A. She was the Executive Housekeeper.

Q. I see. Was Mrs. Fitzpatrick at this Holiday Inn from the time you started all the way until you took your vacation, or did she leave for a period of time? A. No, she was there.

Q. Continually? [597] A. Yes.

Q. Now, was it October of '72 when she left this Holiday Inn? A. No.

Q. It was not October of '72? A. No.

D. Zielinski, for Petitioner, Re-direct.

Q. Was it November of '72? A. I can't remember.

Q. Do you recall if it was the fall or winter? A. I don't know.

Q. She returned in March of '73; is that right? A. Yes.

Q. And during the time that she left until the time that she came back, she came in for two or three days at a time; is that it? A. In between, that's right.

Q. In other words, did she come in for a total of three days or did she come in more than once for more than three days apiece? I'm not clear? A. No, she'd just come in.

Q. How many times would you say after she left and until she returned? A. Oh, I don't know.

Q. No idea? A. No.

[598] Q. When she came in, did she stay for more than one day? A. Oh, yes.

Q. And would you say the number of times that she came in, was that more than ten? A. I'd say yes.

Q. More than ten times she came in? A. I think so.

Mr. Putrino: Would you mark this, please.

(The document above-referred to, was marked Petitioner's Exhibit 4 for identification)

Q. (By Mr. Putrino) Mrs. Zielinski, I show you what has been marked as Petitioner's Exhibit 4 and ask you if you would read this second paragraph to yourself? A. Yes.

Q. Is that in your handwriting, Mrs. Zielinski? A. No.

Q. Can you tell me, were you present when this was written? A. Yes.

Q. Can you tell us who wrote it? A. No, I don't know.

Q. How many people? A. I didn't know his name.

[599] Q. Somebody at the National Labor Relations Board? A. Yes.

Q. Did you read it before you signed it? A. I tried to.

D. Zielinski, for Petitioner, Re-direct.

Q. Can you tell us, do you have any better recollection as to the number of times Mrs. Fitzpatrick came back after she left and before March, 1973; was it as many as ten times or was it fewer? A. It was fewer, I suppose, more or less.

Q. You testified about a meeting with Mrs. Fitzpatrick when she came back in March of '73. Let me ask you, first of all, did you know she was coming back? A. No.

Q. Was there any rumor around? A. No.

Q. Did the girls expect that she was coming back? A. No.

Q. Did you know why she came back? A. I did.

Q. How did you know? A. Because Mrs. Fitzpatrick was always there when there was trouble around the maids, she was there.

Q. Can you tell us what was the nature of the trouble; what was the problem? [600] A. As I stated before, three maids had walked out.

Q. Do you know why they walked out? A. No, I don't. I was off that day. That was my day off.

Q. In your conversation with Mrs. Fitzpatrick did she indicate to you anything different as to why she was there or why the maids left? A. No, not that I remember.

Q. Do you recall if she told you that she was there because the girls didn't get along with Mrs. Hancock? A. Did she tell me that?

Q. Yes. A. No, not that I know of.

Q. Did you know that the girls left, three girls left because they couldn't get along with Mrs. Hancock? A. Did I know that? Yes.

Q. How did you know that? A. They told me.

Q. Mr. Newsome asked you a question about the meeting you had with Mrs. Fitzpatrick. In that meeting did Mrs. Fitzpatrick tell you that you were not to go to Mr. King with a problem until he went to Mrs. Hancock first or Mrs. Fitzpatrick first or was it just Mrs. Fitzpatrick? A. I told the

D. Zielinski, for Petitioner, Re-direct.

Labor Board Man that Mrs. Fitzpatrick [601] told us we were not to go to the front office with our problems, to Mr. King, unless we came to her.

Q. "Her" meaning who? A. "Her" I meant, Mrs. Fitzpatrick.

Q. Who is Ruth? A. Ruth is Mrs. Hancock.

Q. I show you your affidavit which is Petitioner's Exhibit 5 and ask you to read, starting at the top of the page, the first paragraph. Have you read that? A. Yes.

Q. Does that refresh your recollection? A. I still say that is what I was telling him, to her first and at the time we were talking about Mrs. Hancock, and he wrote down "Ruth," but I didn't mean Ruth. I meant Mrs. Fitzpatrick.

Q. Did you ask him to change that statement here at all? A. No, I didn't.

Q. You left it the way it was; you left "Ruth" in there? A. Yes.

Q. There are some changes though, that are initialled; is that true? A. Initialled where?

Q. Are those your initials? [602] A. That is my initials.

Q. That is the second page. Is there an initial here on the first page? A. Yes.

Q. Each page was read by you; is that right? A. Yes.

Q. You didn't ask Mr. Fineburg, the Board Agent to change that statement from "Ruth" to someone else; is that right? A. No.

Q. You left it the way it was; is that right? A. Yes.

Q. I'm going to read you your statement, Mrs. Zielinski, and I'm quoting. . .

Mr. Drenning: I would object to the reading of the affidavit into the record.

Hearing Officer: Why don't you try to establish that the affidavit has a prior inconsistency in the statement.

D. Zielinski, for Petitioner, Re-direct.

Mr. Putrino: That's right. There's two. In fact within the statement itself. . . I think we can perhaps clear up the inconsistency.

Hearing Officer: Yes. Inconsistency between her now testimony and the affidavit.

Mr. Putrino: That's right.

[603] Hearing Officer: Is it other than what you have already brought out?

Mr. Putrino: Yes.

Hearing Officer: You may proceed.

Q. (By Mr. Putrino) Let me show you the statement. I show you the affidavit. Read the last sentence to yourself, beginning with the words "She", read it to yourself. A. I don't even remember saying that at all.

Q. You don't? A. No, I don't.

Mr. Putrino: I'd like to read that into the record.

Hearing Officer: Well, bring the witness' attention to the particular sentence or clause that you have in mind; show the witness, please.

Q. (By Mr. Putrino) The sentence beginning with "She told you", now read that sentence and the last sentence again. A. I don't remember even saying this, the last sentence, at all.

Q. Do you remember reading that when you signed the affidavit? A. He took my statement in. . . practically in the dark. I had no glasses. I read it. That is why I [604] sent to the Board for a copy, because I didn't think I knew what I had given him. That is why.

Q. Were you sworn when you signed your name to that; did you raise your hand? A. No.

Q. And swear to the truth of that statement? A. No, I didn't raise my hand.

Q. Were you asked to swear to the truth of that? A. No, he didn't tell me to swear.

D. Zielinski, for Petitioner, Re-direct.

Q. Did you know that was an affidavit under oath? A. Just told me to sign my initials; that was all he said.

Q. On the last page where you signed your name. . . A. Yes, I signed it.

Q. . . . did you raise your hand and swear to the truth of that statement? A. No, I did not. He didn't ask me to.

Q. Did you know that this was an affidavit? A. Yes.

Q. Did you know that you were telling, supposed to be telling the truth? A. I'm telling the truth right here.

Q. I didn't ask you that. Did you know that you were supposed to tell the truth in the statement? A. I'm still telling the truth.

[605] Q. You read the statement? A. I read it to the best of my knowledge.

Q. And you read it before you signed it; right? A. Right.

Mr. Putrino: I'd like to read that sentence.

Hearing Officer: Okay. Go ahead. Would you show it to the witness as you are reading it?

Mr. Putrino: "She told us never to go to the front office with a problem unless we told Ruth first. She told us Mr. King was in the hospital and it was from all this trouble in the housekeeping department. She didn't tell us to come to her with our problems."

The Witness: I don't remember even saying that at all.

Q. (By Mr. Putrino) In the conversation you had with Mrs. Fitzpatrick in May of 1973 regarding Mrs. Hancock hiring or firing, is it your testimony now she did not say to you that Mr. Duglaris did not want Mrs. Hancock hiring or firing anymore? A. "Anymore" in this I didn't say.

Q. He did not say that? A. No, I didn't.

Q. I show you Petitioner's Exhibit 4 for identification and ask you to read the top of the page [606] to yourself, the sen-

D. Zielinski, for Petitioner, Re-cross.

tence beginning "She said". Does that refresh your recollection at all? A. Just to the conversation we had.

Q. Do you recall whether you did or did not say anymore? A. She just said Mr. Duglaris doesn't want Ruth hiring or firing. That is all she said to me. I don't know how he wrote it, but that is how I said it.

Mr. Putrino: I have nothing further.

RE-CROSS EXAMINATION:

Q. (By Mr. Drenning) Mrs. Zielinski, Counsel asked you about this meeting held when Mrs. Fitzpatrick returned, and according to your affidavit Mrs. Fitzpatrick referenced the fact that Mr. King was in the hospital because of the maid difficulty. A. This, sir, is at a different period of time. He has this all written in as though it had occurred within two days, but that isn't right.

Q. When Mrs. Fitzpatrick had come back, it is true, is it not, that Mr. King was still working at the Inn? A. Yes.

Q. And he hadn't gone to the hospital at that point? A. Not yet.

[607] Q. Just say in your own words, Mrs. Zielinski. . . I think there's some confusion with all the questions back and forth. . . just indicate in your own words what Mrs. Fitzpatrick said at the May meeting when she returned in March of '73? A. She had come in. We had just gotten in to go to work.

Q. When you say "she" you mean Mrs. Fitzpatrick? A. Yes, Mrs. Fitzpatrick called us in to the linen room. She said, "We're going to have a meeting." She said, "You know why I am here."

Q. Just indicate what else she said. A. And then she told us that . . . well, that was it.

Q. And what did she say with reference to going to the Innkeeper, Mr. King? A. That was later, not then.

D. Zielinski, for Petitioner, Re-cross.

Q. Another date, you mean? A. Yes, that was another date. That wasn't that morning.

Q. I see. Well, how long after the first meeting was the second meeting where she made the remark about going to the Innkeeper or not going to the Innkeeper? A. When she made that remark, it wasn't at the meeting. We were all in filling our carts for the next day's work. We were all in the same room doing [608] this.

Q. All the maids on that shift were there at that time? A. Yes they were all there.

Q. What was the time span between this first and second meeting. . .when I say meeting, I mean gathering; a day or a couple of weeks? A. I think three or four days later.

Q. Tell us what she said at that meeting? A. She told us we weren't to go to Mr. King in the front office with those problems; come to her.

Q. "Her" meaning Mrs. Fitzpatrick? A. Right.

Q. From the time Mrs. Fitzpatrick returned to the time you left the employment with the Holiday Inn, if you had a question or problem with your job, to whom would you speak, Mrs. Fitzpatrick or Mrs. Hancock? A. Yes, Mrs. Fitzpatrick.

Q. From whom would you receive instructions since Mrs. Fitzpatrick returned? A. From Mrs. Fitzpatrick.

Q. Have you ever had occasion to be disciplined for unsatisfactory rooms since Mrs. Fitzpatrick came back? A. No, no.

[609] Q. Who checked the rooms that you cleaned? A. Mrs. Fitzpatrick.

Q. Any mistakes or omissions in that room, who called it to your attention? A. She did.

Q. Mrs. Fitzpatrick? A. Yes.

Mr. Drenning: I have no more questions.

D. Zielinski, for Petitioner, Re-direct.

Hearing Officer: Mr. Putrino?

Mr. Putrino: Yes.

RE-DIRECT EXAMINATION:

Q. (By Mr. Putrino) With regard to that meeting, in March when Mrs. Fitzpatrick said, "You know why I am here"; did you know why she was there? A. I knew why she was there.

Q. She was there because of the problem Mrs. Hancock was having with the girls? A. Because all the girls were walking out and no one knew why.

Q. With regard to that conversation in May of '73 when Mrs. Fitzpatrick told you that Mr. Duglaris did not want Mrs. Hancock hiring and firing, regardless of whether she said "anymore", did you understand why she said that to you? A. No, I didn't.

[610] Q. Had Mrs. Hancock been hiring or firing? A. Prior to that she did hiring; hired these three girls that I was speaking of.

Q. Had she fired any girls? A. I don't know.

Q. Did Mrs. Fitzpatrick tell you she had hired. . . A. No.

Q. Did she tell you she was having trouble, Mrs. Hancock fired someone and she should not? A. No.

Q. When Mrs. Fitzpatrick told you that she didn't want Mrs. Hancock hiring or firing anymore, that didn't make any sense to you, did it? A. No, it didn't.

Q. Just said that to you out of the cold? A. We were just talking.

Mr. Putrino: I see. Nothing further.

Mr. Drenning: Nothing further.

Mr. Newsome: Nothing further.

Hearing Officer: That's all.

(Witness excused)

D. King, re-called for Employer, Direct.

Mr. Putrino: We have nothing further at this time.

Mr. Drenning: A brief rebuttal on some very brief specifics. I will try to be as brief as possible.

Whereupon,

[611] DEAN KING was recalled as a witness by and on behalf of the Employer, and having already been duly sworn, was examined and testified further as follows:

Direct Examination:

Q. (By Mr. Drenning) Mr. King, first of all, as delicately as you can, could you tell us the circumstances involving Ricki Booth cessation of employment with the Holiday Inn, as briefly as possible, and more particularly, Mrs. Nichols' involvement in that? A. Ricki Booth was one of our first employees that we hired. She was one of the original waitresses, one of the best waitresses we had. And, there came a situation, as Mrs. Nichols has testified, and that I previously testified to, that there was an involvement with an Assistant Innkeeper. To what degree this involvement was was hard to determine at the onset. Since Mrs. Nichols was a friend of Ricki Booth I asked her to try to find out as much information as possible. I talked to Mrs. Nichols on several occasions about what she had found out lately. At the same time also the Assistant Manager's wife was in contact with my wife and there was, you know, a lot of trying to find out the basis for all this.

[612] Q. All right. How did Mrs. Nichols get involved. What did she do? A. Mrs. Nichols, I asked her to call Ricki Booth on the phone. I believe it was in my office, and she was very upset about this, and she began to cry. I called. I talked to Ricki. I told Ricki to come in. I so explained the situation

D. King, re-called for Employer, Direct.

to Ricki about the involvement and so forth and told her that she's have to leave our employment.

Q. Did she subsequently leave? A. She did leave; right.

Q. Did Mrs. Nichols make any telephone calls to Mrs. Booth with reference to the dilemma? A. I don't believe she got a hold of her.

Q. Did Mrs. Nichols indicate that to Mrs. Booth, that she was terminated? A. No, not directly; no, sir.

Q. Did you indicate to Ricki Booth that she was terminated? A. Yes, I did. I had a conversation with her.

Q. Very briefly would you describe the insurance program available to employees of the Holiday Inn? A. Yes. Employees when first hired, they sign an application and after they have been in our employment for three months they are eligible for group insurance [613] and we have two plans. We have a hospitalization plan and a Plan B. There is free life insurance for all the employees in both plans and that is available for all employees, and then there's also a dependent coverage which is available to the employee if they wish to carry their family.

Q. The hospitalization is contributed to by both the employer and employee? A. Right.

Q. All the people classified in the bargaining unit, did all those people receive that kind of coverage? A. Yes, they did.

Q. Did Mrs. Hancock receive that kind of insurance coverage? A. Yes, she did.

Q. Did Mr. Straight receive that kind of insurance coverage? A. Yes, he did.

Q. Likewise Mrs. Nichols? A. Yes, she received the same.

Q. How about Mrs. Fitzpatrick? A. No, Mrs. Fitzpatrick would have, in addition to a regular insurance program, she would have a major medical program.

[614] Q. How about yourself? A. Myself and the Assistant Innkeeper, too.

Mr. Drenning: I have no more questions.

D. King, re-called for Employer, Cross.

CROSS EXAMINATION:

Q. (By Mr. Putrino) With regard to Miss Nichols talking to Mrs. or Miss Booth, you indicated in answer to a question that she did not directly tell her she was terminated. What did you mean by "not directly" then? A. I meant I was trying to ascertain the personal nature of the involvement.

Q. I'm asking you if you knew in fact if Mrs. Nichols called Mrs. Booth and told her she was terminated? A. I know for a fact she did not call Mrs. Booth and tell her she was terminated.

Q. How do you know that? A. Because I terminated her.

Q. Do you know if before you talked to Miss Booth, Miss Nichols talked to Miss Booth as well? A. I'm sure that she may have talked to Miss Booth about the policy and procedures that are outlined in the manual that was given to all employees when we opened the Holiday Inn.

Q. Was that at your request or on her own initiative? A. May have been on her own. I don't know.

[615] Q. You requested it? A. No, I did not.

Q. You said that she had talked to Miss Booth about the policies and procedures. . . A. I didn't say that. I said she may have.

Q. You don't know if she did or didn't? A. No, I don't.

Q. With regard to the insurance coverage you mentioned Plan B. What is Plan B? A. That is a supplemental insurance program for those employees, since predominantly we hire a great deal of women in this employment, since their husband may be working in factories that has adequate coverage, we have an additional supplement, additional type insurance available to all employees.

Q. In this, the contribution for that are shared; in other words, that is paid partly by the employee and partly by the employer? A. Correct.

D. King, re-called for Employer, Cross.

Q. Is your hospitalization coverage paid partly by yourself and partly by the Inn? A. Is mine? Yes, it is.

Q. In other words, you share in the cost of all the coverage that you get? A. Yes.

[616] Q. And the same is true of Mrs. Fitzpatrick? A. Correct.

Q. The only difference between yourself and Mrs. Fitzpatrick and Mr. Straight and Mrs. Hancock is the fact that you and Mrs. Fitzpatrick have major medical; is that right? A. Correct.

Q. And that is coverage that comes into effect after what amount, do you know, what then is the deductible on the major medical? A. Major medical means, covers 80% of the out-of-pocket expenses over \$100 for a given period of time, and I believe that period of time is 90 days. I'm not sure on that.

Q. That supplements your regular hospitalization? A. Correct, sir.

Mr. Putrino: Nothing further.

Mr. Drenning: Nothing further.

Mr. Newsome: I have nothing.

Hearing Officer: Thank you. Is there anything else?

Mr. Drenning: No, Mr. Hearing Officer, I have nothing more.

Mr. Putrino: We have nothing.

Hearing Officer: Mr. Newsome?

[617] Mr. Newsome: I have nothing.

Mr. Drenning: Mr. Hearing Officer, could I ask what your disposition is about briefs, if you want briefs before your decision?

Hearing Officer: My disposition as to briefs is that no briefs to me. I'm going to write a report and recom-

D. King, re-called for Employer, Cross.

mendation and any party, if it thinks it advisable, may take any such exceptions as they wish, but I don't want a brief. I'm going to issue this report on the credibility of witnesses, findings of fact and recommendations to the Board as to the disposition of these challenges as set forth in the Notice of Hearing on challenges. I could give the parties, if they wish, very briefly, chances to make such arguments as they wish, and if you want to cite any authority to me, you certainly may, but I don't want any briefs on the matter. I could right now, give you the opportunity if you want to avail yourself of it.

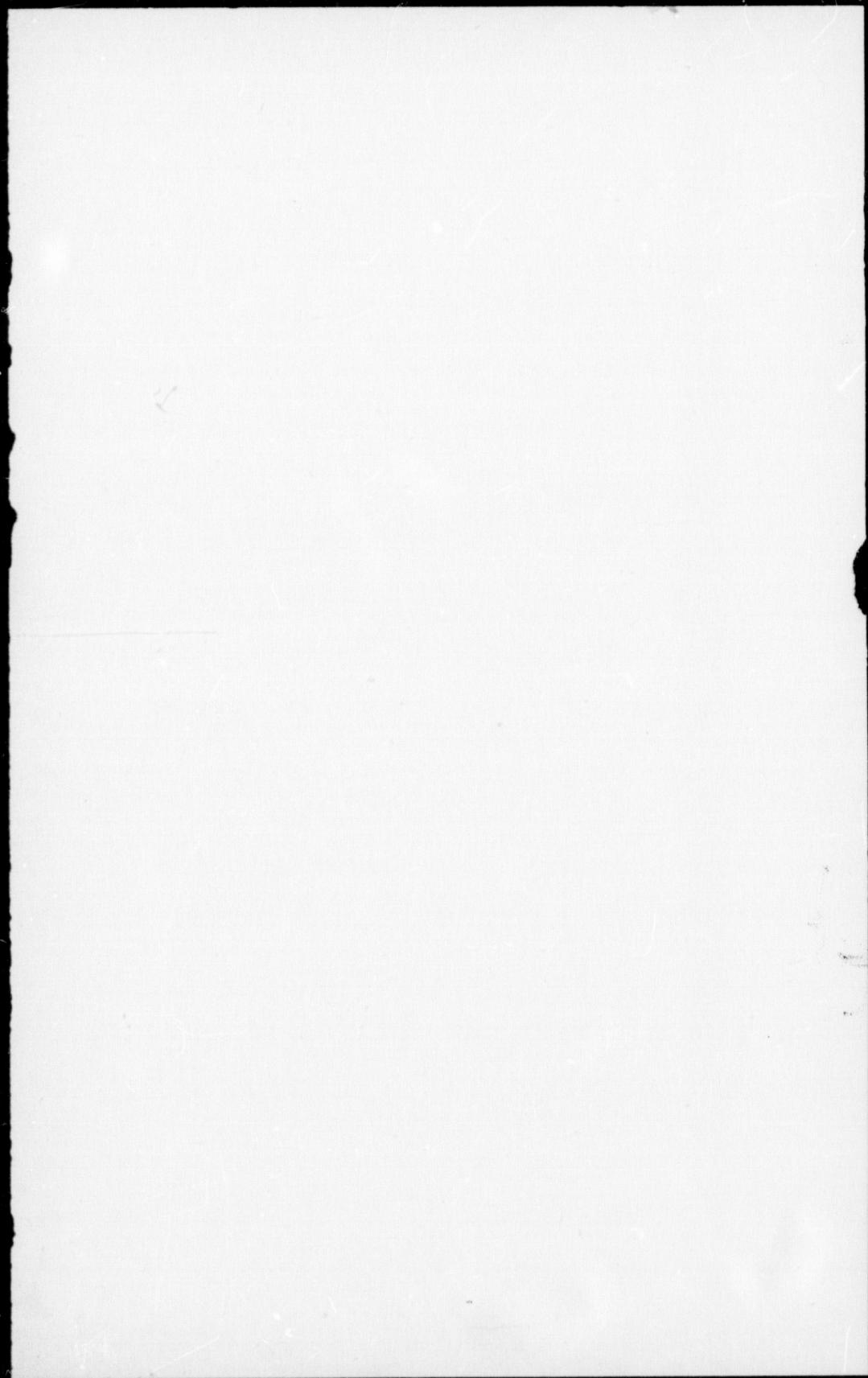
Mr. Drenning: I will waive argument, Mr. Hearing Officer.

Mr. Putrino: Likewise.

Mr. Newsome: No.

Hearing Officer: All right then. I want to thank Counsel and the Reporter and the witnesses.

The Batavia Times Publishing Co.
Batavia, N. Y. 14020
(3-3-75-20)



AFFIDAVIT OF SERVICE BY MAIL

State of New York) RE: N. L. R. B.
County of Genesee) ss.: v
City of Batavia) Dunkirk Motor Inn et al
Docket No. 75-4020

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 14 day of April, 1975
I mailed 3 copies of a printed Appendix in
the above case, in a sealed, postpaid wrapper, to:

Moot, Sprague, Marcy, Landy, Fernbach & Smythe, Esqs.
2300 Erie County Savings Bank Building
Buffalo, New York 14202

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Elliott Moore, National Labor Relations Board, N.L.R.B.
Building, Room 910, 1717 Pa. Avenue, N.W., Washington, D.C. 20570

Leslie R. Johnson

Sworn to before me this

14 day of April, 1975

NOTARY PUBLIC, State of New York
My Commission Expires March 31, 1978

77